

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

FIRST SPECIAL SESSION
October 23, 2017 to November 6, 2017

SECOND REGULAR SESSION
January 3, 2018 to May 2, 2018

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 5, 2018

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 1, 2018

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

Augusta, Maine
2018

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PREFACE

The 2017 edition of Laws of the State of Maine is the official publication of the session laws of the State of Maine enacted by the 128th Legislature and is compiled and published under the authority of the Maine Revised Statutes, Title 3, section 163-A. Laws of the State of Maine has been in continuous publication since 1820, when the acts and resolves adopted by the First Legislature were published by the Secretary of State under the authority of Resolve 1820, chapter 25.

Volume 2 contains the public laws, private and special laws and resolves enacted at the First Special Session and the Second Regular Session of the 128th Legislature, followed by the 2017 Revisor's Report, chapter 1, Initiated Bill 2017, chapter 1 and a selection of significant addresses, joint resolutions and memorials.

Volume 1 was published at the conclusion of the First Regular Session of the 128th Legislature and contains legislation enacted during that session.

The following conventions are used throughout the series.

1. At the top of each page is a heading that classifies each law by session of passage, year, type and chapter number.
2. A table of contents that locates major divisions and contents by page number is located at the beginning of each volume.
3. An individual subject index of the documents contained in these volumes, arranged alphabetically by subject heading with corresponding chapter numbers, is located at the end of this volume.
4. Session cross-reference tables are also provided at the end of this volume showing how unallocated public laws, laws exempted in previous revisions and titles and sections of the Maine Revised Statutes of 1964 have been affected by the laws included in this publication.
5. Words and phrases deleted from the statutes are shown struck through. When an entire unit is repealed, the text that is repealed is not shown struck through, but its repeal is indicated by express language.
6. When new words or sections are added to the statutes, they are underlined.
7. A chaptered law's Legislative Document number is printed beneath its chapter number heading, indicating the source of the chapter.
8. The effective date for Maine laws is provided for in the Constitution of Maine, Article IV, Part Third, Section 16, which specifies that, except for certain emergency legislation, an act or resolve enacted into law takes effect 90 days after the adjournment of the session in which it passed. The general effective date of the nonemergency law passed at the First Special Session of the 128th Legislature is February 5, 2018 and of nonemergency laws passed at the Second Regular Session of the 128th Legislature is August 1, 2018. The effective dates of emergency legislation vary and are provided at the ends of the chapters that were enacted as emergencies.

Copies of a specific chaptered law may be obtained by contacting the Engrossing Division of this office. Laws of the State of Maine is also available online through the website of the Office of the Revisor of Statutes at <http://www.mainelegislature.org/ros/lom/lomdirectory.htm>.

This edition of Laws of the State of Maine and its predecessors have been prepared for the convenience of the people of the State of Maine, and any comments or suggestions for improvements in subsequent editions would be appreciated.

Suzanne M. Gresser
Revisor of Statutes
August 2018

LEGISLATIVE STATISTICS

FIRST SPECIAL SESSION 128th Legislature

Convened	October 23, 2017
Adjourned	November 6, 2017
Days in Session	
Senate	2
House of Representatives.....	2
Legislative Documents.....	5
Public Laws.....	4
Private and Special Laws	0
Resolves	1
Constitutional Resolutions	0
Competing Measure Resolutions	0
Initiated Bills.....	0
Vetoes	1
Overridden	0
Sustained.....	1
Emergency Enactments.....	3
Effective Date for Non-Emergency Laws.....	February 5, 2018

LEGISLATIVE STATISTICS

SECOND REGULAR SESSION 128th Legislature

Convened	January 3, 2018
Adjourned	May 2, 2018
Days in Session	
Senate	38
House of Representatives.....	38
Legislative Documents.....	578
Carryover Bills.....	*
Public Laws.....	101
Private and Special Laws	6
Resolves	28
Constitutional Resolutions	0
Competing Measure Resolutions	0
Initiated Bills.....	1
Vetoed	49
Overridden	31
Sustained.....	18
Emergency Enactments.....	39
Effective Date	August 1, 2018 (unless otherwise indicated)

(Note: 319 bills were carried over to the Second Regular Session of the 128th Legislature.)

*Pursuant to Joint Order 2017, S.P. 748 all matters before the Second Regular Session of the 128th Legislature were held over to the Next Special Session.

PUBLIC LAWS OF THE STATE OF MAINE
AS PASSED AT
THE FIRST SPECIAL SESSION OF THE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
2017

CHAPTER 313
H.P. 242 - L.D. 328

**An Act To Encourage Regional
Planning and Reorganization**

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

Sec. 1. 30-A MRSA §6201, sub-§1, as enacted by PL 2005, c. 266, §2, is amended to read:

1. Commissioner. "Commissioner" means the Commissioner of ~~Administrative and Financial Services~~ Economic and Community Development.

Sec. 2. 30-A MRSA §6201, sub-§1-A is enacted to read:

1-A. Capital grant. "Capital grant" means a grant award from the fund pursuant to section 6208 to cover eligible costs for a capital grant as specified in subsection 5, paragraph C.

Sec. 3. 30-A MRSA §6201, sub-§§2, 3 and 5, as enacted by PL 2005, c. 266, §2, are amended to read:

2. Cooperative services grant. "Cooperative services grant" means a grant award from the fund pursuant to section 6208 to cover eligible costs ~~of a qualifying project for a cooperative services grant as specified in subsection 5, paragraph B.~~

3. Department. "Department" means the Department of ~~Administrative and Financial Services~~ Economic and Community Development.

5. Eligible costs. "Eligible costs" means the actual and direct expenses incurred in implementing a cooperative services grant, a capital grant or a planning grant awarded under section 6208, including expenses incurred in connection with the following activities for cooperative services grants, capital grants and planning grants.

A. Eligible costs for a planning grant include the expense of:

- (1) Studies to examine alternative methods of achieving collaboration, including those adopted by other municipalities;
- (2) Cost-benefit studies; and
- (3) Facilitation of community meetings and public outreach and education.

B. Eligible costs for a cooperative services grant ~~includes~~ include the expense of:

- (1) Execution and implementation of an interlocal agreement under chapter 115, a tax base sharing arrangement or another regional government mechanism for achieving collaboration;
- (2) Joint strategic planning or comprehensive or capital investment planning;
- (3) Public outreach and education;
- (4) Collaboration or consolidation of offices or services;
- (5) Professional services, such as those provided by attorneys, consultants, facilitators and architects; and
- (6) Administrative services and costs, such as photocopying, printing, telephone service and travel costs.

C. Eligible costs for a capital grant include the expense of:

- (1) Site, facility, infrastructure or utility system acquisition;
- (2) Repair, rehabilitation or renovation of existing facilities;
- (3) New construction or expansion of existing facilities; and
- (4) Purchase of major equipment or systems.

Administrative and other costs of ongoing operations that would otherwise be budgeted by a municipality, county or regional government subdivision are not eligible costs.

Sec. 4. 30-A MRSA §6205, first and last ¶¶, as enacted by PL 2005, c. 266, §2, are amended to read:

In accordance with the request for proposals issued by the department under section 6209, an eligible applicant may apply for a planning grant, a capital grant or a cooperative services grant from the fund. In order to be eligible for a planning grant, a capital grant or a cooperative services grant, an eligible applicant must demonstrate in its application that the project for which it seeks a grant will be undertaken in cooperation with one or more municipalities, counties or regional government subdivisions.

In applying for a cooperative services grant or a capital grant, an eligible applicant must specify the type of qualifying project for which assistance is sought and how the project will reduce demand for property tax revenues.

Sec. 5. 30-A MRSA §6206, as amended by PL 2007, c. 662, §5, is further amended by adding after the first paragraph a new paragraph to read:

The department may require an eligible applicant to provide matching funds for a capital grant if suggested by the review panel during consultation required under section 6208, subsection 1.

Sec. 6. 30-A MRSA §6207, sub-§2, as enacted by PL 2005, c. 266, §2, is amended to read:

2. Cooperative services grants; capital grants. In evaluating and ranking each application for a cooperative services grant or a capital grant, the review panel established under section 6208 shall consider the aggregate reduction in the demand for property tax revenue in the geographical region covered by the municipalities, counties and regional government subdivisions cooperating in the qualifying project, the chance of success of the project and the ability to replicate the efficiency achieved by the project in other regions; and other related factors in accordance with a request for proposals issued by the department under section 6209.

Sec. 7. 30-A MRSA §6208, sub-§1, ¶C, as enacted by PL 2005, c. 266, §2, is amended to read:

C. A representative of the Department of ~~Economic and Community Development~~ Administrative and Financial Services, appointed by the Governor;

Sec. 8. 30-A MRSA §6208, sub-§2, as enacted by PL 2005, c. 266, §2, is amended to read:

2. Review panel duties. The review panel established in subsection 1 shall:

A. Determine whether each eligible applicant for a cooperative services grant, a capital grant or a planning grant meets the eligibility criteria under section 6205 and provide written notice to that applicant of its eligibility determination; and

B. In accordance with the request for proposals issued under section 6209, review and rank proposals from applicants eligible for cooperative services grants, capital grants and planning grants under section 6205 against the funding criteria defined in section 6207 and award cooperative services grants, capital grants or planning grants to proposals that best meet the funding criteria in section 6207 subject to availability of funding.

Prior to issuing the request for proposals as provided in section 6209, the department shall consult with the

review panel, which may suggest criteria for consideration by the department.

Sec. 9. 30-A MRSA §6209, as enacted by PL 2005, c. 266, §2, is amended to read:

§6209. Request for proposals

No later than November 1st of each year, the department shall issue a request for proposals in accordance with the Department of Administrative and Financial Services, Bureau of General Services Rules, Chapter 110 that includes the schedules for submission and action on applications for grants under this chapter; procedures for scoring and ranking those applications; and procedures and information requirements related to application submissions. The department shall provide reasonable notice to all eligible applicants about the availability of the fund and the solicitation of grant proposals.

See title page for effective date.

CHAPTER 314

S.P. 605 - L.D. 1648

**An Act To Amend the Law
Recognizing Local Control
Regarding Food Systems and
Require Compliance with
Federal and State Food Safety
Regulations**

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

Whereas, in the First Regular Session of the 128th Legislature, the Legislature enacted "An Act To Recognize Local Control Regarding Food Systems," which the Governor, on June 16, 2017, signed and which became Public Law 2017, chapter 215, effective November 1, 2017; and

Whereas, under provisions of the Federal Meat Inspection Act and the Federal Poultry Products Inspection Act, the United States Department of Agriculture, Food Safety and Inspection Service has questioned the State's authority under Public Law 2017, chapter 215 to enforce the requirements of the State's meat and poultry products inspection and licensing program set forth in the Maine Revised Statutes, Title 22, chapter 562-A in a manner that is at least equal to the standards imposed and enforced under the federal acts; and

Whereas, the Secretary of Agriculture of the United States has notified the Governor that, on or after November 1, 2017, Maine will become a so-called designated state for federal inspection of all the

State's licensed or registered slaughtering and processing establishments, which would threaten the meat and poultry processing infrastructure of our State and potentially cause grave harm to the State's rural economies; 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 c. 8-F is enacted to read:

CHAPTER 8-F

MAINE FOOD SOVEREIGNTY ACT

§281. Short title

This chapter may be known and cited as "the Maine Food Sovereignty Act."

§282. Definitions

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

1. Direct producer-to-consumer transaction. "Direct producer-to-consumer transaction" means a face-to-face transaction involving food or food products at the site of production of those food or food products.

2. Food or food products. "Food or food products" means food or food products intended for human consumption, including, but not limited to, milk or milk products, meat or meat products, poultry or poultry products, fish or fish products, seafood or seafood products, cider or juice, acidified foods or canned fruits or vegetables.

3. State food law. "State food law" means any provision of this Title or Title 22 that regulates direct producer-to-consumer transactions.

§283. Statement of policy; local control and rural economic development

It is the policy of this State to encourage food self-sufficiency for its citizens. The department shall support policies that:

1. Local control. Through local control, preserve the ability of communities to produce, process, sell, purchase and consume locally produced foods;

2. Small-scale farming and food production. Ensure the preservation of family farms and traditional foodways through small-scale farming and food production;

3. Improved health and well-being. Improve the health and well-being of citizens of this State by reducing hunger and increasing food security through improved access to wholesome, nutritious foods by supporting family farms and encouraging sustainable farming and fishing;

4. Self-reliance and personal responsibility. Promote self-reliance and personal responsibility by ensuring the ability of individuals, families and other entities to prepare, process, advertise and sell foods directly to customers intended solely for consumption by the customers or their families; and

5. Rural economic development. Enhance rural economic development and the environmental and social wealth of rural communities.

§284. Home rule authority

Pursuant to the home rule authority granted to municipalities by Title 30-A, section 3001 and by the Constitution of Maine, Article VIII, Part Second, and notwithstanding any provision of state food law to the contrary, except as contained in section 285, a municipality may adopt ordinances regarding direct producer-to-consumer transactions and the State shall recognize such ordinances by not enforcing those state food laws with respect to those direct producer-to-consumer transactions that are governed by the ordinance.

§285. Departmental authority; livestock and poultry

Notwithstanding any provision in this chapter to the contrary, the department shall implement and enforce all provisions of Title 22, chapter 562-A and the rules adopted thereunder that are necessary to ensure that the requirements of the State's meat and poultry products inspection and licensing program are at least equal to the applicable requirements specified under applicable federal acts, as defined by the United States Department of Agriculture or other federal agencies, without exception.

§286. Compliance with food safety regulations

An individual who grows, produces, processes or prepares food or food products for purposes other than direct producer-to-consumer transactions in a municipality that adopts or amends an ordinance pursuant to section 284 shall grow, produce, process or prepare the food or food products in compliance with all applicable state and federal food safety laws, rules and regulations.

Sec. 2. 7-A MRSA §101, sub-§2-A, as enacted by PL 2013, c. 405, Pt. A, §7, is repealed.

Sec. 3. 7-A MRSA §101, sub-§2-B, as enacted by PL 2017, c. 215, §1, is repealed.

Sec. 4. 7-A MRSA §201-A, as enacted by PL 2013, c. 405, Pt. A, §8, is repealed.

Sec. 5. 7-A MRSA §201-B, as enacted by PL 2017, c. 215, §2, is repealed.

Sec. 6. Authority to report a bill. The Joint Standing Committee on Agriculture, Conservation and Forestry may report out a bill relating to the Maine Revised Statutes, Title 7, chapter 8-F to the Second Regular Session of the 128th Legislature.

Sec. 7. Effective date. Those sections of this Act that repeal the Maine Revised Statutes, Title 7-A, section 101, subsection 2-B and Title 7-A, section 201-B take effect November 1, 2017.

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

Effective October 31, 2017, unless otherwise indicated.

**CHAPTER 315
S.P. 606 - L.D. 1649**

**An Act To Provide Funding for
Geographic Information
System Services**

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

Whereas, this legislation provides funding to the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information for the current fiscal year; and

Whereas, certain obligations and expenses related to the provision of services by the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information to state agencies will become due and payable during the current fiscal year; 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. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Revenue Services, Bureau of 0002

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

GENERAL FUND	2017-18	2018-19
All Other	\$263,213	\$265,725
GENERAL FUND TOTAL	\$263,213	\$265,725
ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF		
DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$263,213	\$265,725
DEPARTMENT TOTAL - ALL FUNDS	\$263,213	\$265,725

AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF

Office of the Commissioner 0401

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

GENERAL FUND	2017-18	2018-19
All Other	\$102,512	\$102,921
GENERAL FUND TOTAL	\$102,512	\$102,921
OTHER SPECIAL REVENUE FUNDS		
All Other	\$18,090	\$18,163
OTHER SPECIAL REVENUE FUNDS TOTAL	\$18,090	\$18,163

AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF

DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$102,512	\$102,921
OTHER SPECIAL REVENUE FUNDS	\$18,090	\$18,163

DEPARTMENT TOTAL - ALL FUNDS	\$120,602	\$121,084
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BAXTER STATE PARK AUTHORITY
Baxter State Park Authority 0253

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$6,780	\$6,818
OTHER SPECIAL REVENUE FUNDS TOTAL	\$6,780	\$6,818

BAXTER STATE PARK AUTHORITY

DEPARTMENT TOTALS	2017-18	2018-19
OTHER SPECIAL REVENUE FUNDS	\$6,780	\$6,818
DEPARTMENT TOTAL - ALL FUNDS	\$6,780	\$6,818

DEFENSE, VETERANS AND EMERGENCY MANAGEMENT, DEPARTMENT OF
Administration - Maine Emergency Management Agency 0214

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

FEDERAL EXPENDITURES FUND	2017-18	2018-19
All Other	\$40,410	\$40,640
FEDERAL EXPENDITURES FUND TOTAL	\$40,410	\$40,640

DEFENSE, VETERANS AND EMERGENCY MANAGEMENT, DEPARTMENT OF

DEPARTMENT TOTALS	2017-18	2018-19
FEDERAL EXPENDITURES FUND	\$40,410	\$40,640

DEPARTMENT TOTAL - ALL FUNDS	\$40,410	\$40,640
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EDUCATION, DEPARTMENT OF
School Finance and Operations Z078

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

GENERAL FUND	2017-18	2018-19
All Other	\$5,644	\$5,681
GENERAL FUND TOTAL	\$5,644	\$5,681

EDUCATION, DEPARTMENT OF
DEPARTMENT TOTALS

GENERAL FUND	2017-18	2018-19
GENERAL FUND	\$5,644	\$5,681
DEPARTMENT TOTAL - ALL FUNDS	\$5,644	\$5,681

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Administration - Environmental Protection 0251

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

GENERAL FUND	2017-18	2018-19
All Other	\$103,271	\$103,753
GENERAL FUND TOTAL	\$103,271	\$103,753

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$44,604	\$44,604
OTHER SPECIAL REVENUE FUNDS TOTAL	\$44,604	\$44,604

ENVIRONMENTAL PROTECTION, DEPARTMENT OF
DEPARTMENT TOTALS

DEPARTMENT TOTALS	2017-18	2018-19
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GENERAL FUND	\$103,271	\$103,753
OTHER SPECIAL REVENUE FUNDS	\$44,604	\$44,604
DEPARTMENT TOTAL - ALL FUNDS	\$147,875	\$148,357

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Office of the Commissioner 0142

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

GENERAL FUND	2017-18	2018-19
All Other	\$27,655	\$27,793
GENERAL FUND TOTAL	\$27,655	\$27,793
OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$18,437	\$18,529
OTHER SPECIAL REVENUE FUNDS TOTAL	\$18,437	\$18,529

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$27,655	\$27,793
OTHER SPECIAL REVENUE FUNDS	\$18,437	\$18,529
DEPARTMENT TOTAL - ALL FUNDS	\$46,092	\$46,322

HOUSING AUTHORITY, MAINE STATE

Housing Authority - State 0442

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$6,780	\$6,818

OTHER SPECIAL REVENUE FUNDS TOTAL	\$6,780	\$6,818
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HOUSING AUTHORITY, MAINE STATE DEPARTMENT TOTALS	2017-18	2018-19
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OTHER SPECIAL REVENUE FUNDS	\$6,780	\$6,818
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DEPARTMENT TOTAL - ALL FUNDS	\$6,780	\$6,818
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INLAND FISHERIES AND WILDLIFE, DEPARTMENT OF

Office of the Commissioner - Inland Fisheries and Wildlife 0529

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

GENERAL FUND	2017-18	2018-19
All Other	\$108,102	\$108,584
GENERAL FUND TOTAL	\$108,102	\$108,584

INLAND FISHERIES AND WILDLIFE, DEPARTMENT OF

DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$108,102	\$108,584
DEPARTMENT TOTAL - ALL FUNDS	\$108,102	\$108,584

LABOR, DEPARTMENT OF

Administration - Labor 0030

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

GENERAL FUND	2017-18	2018-19
All Other	\$5,644	\$5,681
GENERAL FUND TOTAL	\$5,644	\$5,681

LABOR, DEPARTMENT OF		
DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$5,644	\$5,681
DEPARTMENT TOTAL - ALL FUNDS	\$5,644	\$5,681

**MARINE RESOURCES, DEPARTMENT OF
Bureau of Policy and Management 0258**

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

GENERAL FUND	2017-18	2018-19
All Other	\$59,729	\$59,959
GENERAL FUND TOTAL	\$59,729	\$59,959

MARINE RESOURCES, DEPARTMENT OF		
DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$59,729	\$59,959
DEPARTMENT TOTAL - ALL FUNDS	\$59,729	\$59,959

**PUBLIC SAFETY, DEPARTMENT OF
Fire Marshal - Office of 0327**

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$38,138	\$38,368
OTHER SPECIAL REVENUE FUNDS TOTAL	\$38,138	\$38,368

PUBLIC SAFETY, DEPARTMENT OF		
DEPARTMENT TOTALS	2017-18	2018-19
OTHER SPECIAL REVENUE FUNDS	\$38,138	\$38,368

DEPARTMENT TOTAL - ALL FUNDS	\$38,138	\$38,368
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PUBLIC UTILITIES COMMISSION

Emergency Services Communication Bureau 0994

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$40,979	\$41,209
OTHER SPECIAL REVENUE FUNDS TOTAL	\$40,979	\$41,209

PUBLIC UTILITIES COMMISSION		
DEPARTMENT TOTALS	2017-18	2018-19

OTHER SPECIAL REVENUE FUNDS	\$40,979	\$41,209
DEPARTMENT TOTAL - ALL FUNDS	\$40,979	\$41,209

**SECRETARY OF STATE, DEPARTMENT OF
Administration - Motor Vehicles 0077**

Initiative: Provides funding for the Department of Administrative and Financial Services, Office of Geographic Information Systems and Maine Library of Geographic Information.

HIGHWAY FUND	2017-18	2018-19
All Other	\$6,212	\$6,249
HIGHWAY FUND TOTAL	\$6,212	\$6,249

SECRETARY OF STATE, DEPARTMENT OF		
DEPARTMENT TOTALS	2017-18	2018-19

HIGHWAY FUND	\$6,212	\$6,249
DEPARTMENT TOTAL - ALL FUNDS	\$6,212	\$6,249

SECTION TOTALS	2017-18	2018-19
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GENERAL FUND	\$675,770	\$680,097
HIGHWAY FUND	\$6,212	\$6,249
FEDERAL EXPENDITURES FUND	\$40,410	\$40,640
OTHER SPECIAL REVENUE FUNDS	\$173,808	\$174,509
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SECTION TOTAL - ALL FUNDS	\$896,200	\$901,495

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

Effective October 31, 2017.

CHAPTER 316

H.P. 1137 - L.D. 1646

An Act To Implement Ranked-choice Voting in 2021

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

Sec. 1. 21-A MRSA §1, sub-§27-C, as enacted by IB 2015, c. 3, §1, is repealed and the following enacted in its place:

27-C. Elections determined by ranked-choice voting. "Elections determined by ranked-choice voting" means:

A. Primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative;

B. General and special elections for the offices of United States Senator and United States Representative to Congress; and

C. General and special elections for the offices of Governor, State Senator and State Representative.

This subsection is repealed December 1, 2021 unless, prior to that date, the voters of the State ratify an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 authorizing the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected.

Sec. 2. 21-A MRSA §1, sub-§35-A, as enacted by IB 2015, c. 3, §2, is amended to read:

35-A. Ranked-choice voting. "Ranked-choice voting" means the method of casting and tabulating votes in which voters rank candidates in order of pref-

erence, tabulation proceeds in sequential rounds in which last-place candidates are defeated and the candidate with the most votes in the final round is elected.

This subsection is repealed December 1, 2021 unless, prior to that date, the voters of the State ratify an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 authorizing the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected.

Sec. 3. 21-A MRSA §601, sub-§2, ¶J, as enacted by IB 2015, c. 3, §3, is amended to read:

J. For ~~offices elected~~ elections determined by ranked-choice voting, the ballot must be simple and easy to understand and allow a voter to rank candidates for an office in order of preference. A voter may include no more than one write-in candidate among that voter's ranked choices for each office.

This paragraph is repealed December 1, 2021 unless, prior to that date, the voters of the State ratify an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 authorizing the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected.

Sec. 4. 21-A MRSA §695, first ¶, as amended by PL 2001, c. 516, §10, is further amended to read:

Except for elections determined by ranked-choice voting, the following provisions apply to the counting of ballots. The election clerks shall count the ballots under the supervision of the warden as soon as the polls are closed, except that if, in the opinion of the municipal clerk the public interests will best be served, referendum ballots may be counted on the day immediately following the election, as long as the count is completed within 24 hours after the polls are closed. If referendum ballots are counted under this exception, the municipal clerk is responsible for the security and safekeeping of the ballots until the count has been completed.

Sec. 5. 21-A MRSA §722, sub-§1, as amended by PL 2017, c. 141, §2, is further amended to read:

1. How tabulated. The Secretary of State shall tabulate all votes that appear by an election return to have been cast for each question or candidate whose name appeared on the ballot. For ~~offices elected~~ elections determined by ranked-choice voting, the Secretary of State shall tabulate the votes according to the ranked-choice voting method described in section

723-A. The Secretary of State shall tabulate the votes that appear by an election return to have been cast for a declared write-in candidate based on a recount requested and conducted pursuant to section 737-A, subsection 2-A.

Sec. 6. 21-A MRSA §723, sub-§1, as amended by PL 2017, c. 248, §5, is further amended to read:

1. Primary election. In a primary election held before December 1, 2021, the person who receives a plurality of the votes cast for nomination to any office, as long as there is at least one vote cast for that office, is nominated for that office, except for write-in candidates under paragraph A. In a primary election held on or after December 1, 2021, the person who is determined the winner pursuant to section 723-A for nomination to any office, as long as there is at least one vote cast for that office, is nominated for that office, except for write-in candidates under paragraph A.

A. A write-in candidate who complies with section 722-A and who fulfills the other qualifications under section 334 may be nominated at the primary election if that person receives a number of valid write-in votes equal to at least twice the minimum number of signatures required under section 335, subsection 5 on a primary petition for a candidate for that office.

B. The Secretary of State shall immediately certify by mail the nomination of each person nominated by the primary election.

Sec. 7. 21-A MRSA §723, sub-§2, as amended by PL 2017, c. 248, §6, is further amended to read:

2. Other elections. In any other election except for those determined by ranked-choice voting, the person who receives a plurality of the votes cast for election to any office, as long as there is at least one vote cast for that office, is elected to that office, except that a write-in candidate must also comply with section 722-A.

Sec. 8. 21-A MRSA §723-A, sub-§2, as enacted by IB 2015, c. 3, §5, is amended to read:

2. Procedures. Except as provided in subsections 3 and 4, the following procedures are used to determine the winner ~~in~~ of an election ~~for an office elected~~ determined by ranked-choice voting. Tabulation must proceed in rounds. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. The round then ends with one of the following 2 potential outcomes.

A. If there are 2 or fewer continuing candidates, the candidate with the most votes is declared the winner of the election.

B. If there are more than 2 continuing candidates, the last-place candidate is defeated and a new round begins.

Sec. 9. 21-A MRSA §723-A, sub-§5, as enacted by IB 2015, c. 3, §5, is amended to read:

5. Effect on rights of political parties. For all statutory and constitutional provisions in the State pertaining to the rights of political parties, the number of votes cast for a party's candidate for an office ~~elected~~ determined by ranked-choice voting is the number of votes credited to that candidate after the initial counting in the first round described in subsection 2.

Sec. 10. 21-A MRSA §723-A, sub-§5-A is enacted to read:

5-A. Rules. The Secretary of State shall adopt rules for the proper and efficient administration of elections determined by ranked-choice voting. At a minimum, rules required under this subsection must include procedures, as determined appropriate by the Secretary of State, for requesting and conducting recounts of the results as determined in the rounds of tabulation described in subsection 2. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 11. 21-A MRSA §723-A, sub-§6, as enacted by IB 2015, c. 3, §5, is amended to read:

6. Application. This section applies to elections held on or after ~~January 1, 2018~~ December 1, 2021.

Sec. 12. 21-A MRSA §723-A, sub-§7 is enacted to read:

7. Contingent repeal. This section is repealed December 1, 2021 unless, prior to that date, the voters of the State ratify an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 authorizing the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected.

Sec. 13. Secretary of State to report. The Secretary of State shall conduct an evaluation of implementation of ranked-choice voting for primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative and general and special elections for the offices of United States Senator and United States Representative to Congress, including, but not limited to, identification of statutory conflicts between Initiated Bill 2015, chapter 3 as amended by this Act and relevant provisions of the

Maine Revised Statutes. The evaluation must include an estimate of the costs associated with the implementation of ranked-choice voting. No later than January 2, 2019, the Secretary of State shall submit a report to the joint standing committee of the Legislature having jurisdiction over election matters, including recommended legislation, for the administration of ranked-choice voting for the elections as described in this section. The joint standing committee of the Legislature having jurisdiction over election matters is authorized to submit legislation based on the report described in this section to the First Regular Session of the 129th Legislature.

Sec. 14. Contingent legislation. If the Maine Revised Statutes, Title 21-A, section 723-A is repealed pursuant to Title 21-A, section 723-A, subsection 7, the joint standing committee of the Legislature having jurisdiction over election matters shall submit a bill to the Second Regular Session of the 130th Legislature to reflect the repeal of ranked-choice voting provisions found in the Maine Revised Statutes.

See title page for effective date.

**PRIVATE AND SPECIAL LAWS OF THE STATE OF MAINE
AS PASSED AT
THE FIRST SPECIAL SESSION OF THE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
2017**

(There were none.)

**RESOLVES OF THE STATE OF MAINE
AS PASSED AT
THE FIRST SPECIAL SESSION OF THE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
2017**

**CHAPTER 29
S.P. 604 - L.D. 1647**

**Resolve, Authorizing Certain
Land Transactions by the
Bureau of Parks and Lands
within the Department of
Agriculture, Conservation and
Forestry**

Preamble. The Constitution of Maine, Article IX, Section 23 requires that real estate held by the State for conservation or recreation purposes may not be reduced or its uses substantially altered except on the vote of 2/3 of all members elected to each House; and

Whereas, the real estate authorized for conveyance by this resolve is under the designations described in the Maine Revised Statutes, Title 12, section 598-A; and

Whereas, the Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry may sell or exchange lands with the approval of the Legislature in accordance with the Maine Revised Statutes, Title 12, sections 1837 and 1851; and

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

Whereas, this legislation is important to the immediate and long-term economic health of the Town of Washburn and of Aroostook County; and

Whereas, this legislation is important to the safety of the public that uses the multipurpose trail system in the Town of Washburn and to the safety of the public that uses the roadways near that trail system; 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

Sec. 1. Director of the Bureau of Parks and Lands authorized, but not directed, to exchange certain land in the Town of Washburn, Aroostook County. Resolved: That the Director

of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry may by quitclaim deed convey to the Town of Washburn the property southwest of the intersection of Main Street, Route 164, and Gardiner Creek Road constituting a segment of the Aroostook Valley Trail measuring approximately 30 feet wide and approximately 440 feet long from where it joins the Bangor and Aroostook Trail, both being state-owned trails used for motorized recreation, in exchange for conveyance of the property west and north of the intersection of Main Street, Route 164, and Riverside Drive, now owned by the Town of Washburn, constituting a new stretch of trail corridor 60 feet wide, on which the Town of Washburn must have built a new trail making a connection between the 2 trails according to specifications provided by the Bureau of Parks and Lands prior to this conveyance.

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

Effective October 31, 2017.

**CONSTITUTIONAL RESOLUTIONS OF THE STATE OF MAINE
AS PASSED AT
THE FIRST SPECIAL SESSION OF THE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
2017**

(There were none.)

PUBLIC LAWS OF THE STATE OF MAINE
AS PASSED AT
THE SECOND REGULAR SESSION OF THE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
2017

CHAPTER 317
S.P. 613 - L.D. 1663

**An Act To Improve the
Regulation of Debt Collectors**

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

Sec. 1. 32 MRSA §11002, sub-§2, as amended by PL 1995, c. 397, §101, is further amended to read:

2. Conducting business in this State. "Conducting business in this State" means the collection or attempted collection of a debt due another by a debt collector located in this State; the ~~face-to-face~~ solicitation of creditors in this State as clients and the collection or attempted collection of their debts by a debt collector, wherever located; or the collection or attempted collection of ~~debts incurred between a debt~~ from a consumer in this State ~~and creditor in this State~~ by a debt collector, wherever located.

See title page for effective date.

CHAPTER 318
H.P. 1165 - L.D. 1677

**An Act Regarding the
Information Required of Debt
Buyers for Debt Collection**

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

Sec. 1. 32 MRSA §11013, sub-§9, ¶D, as enacted by PL 2017, c. 216, §5, is amended to read:

D. The ~~principal~~ amount due at charge-off;

See title page for effective date.

CHAPTER 319
H.P. 895 - L.D. 1298

**An Act To Update Maine's
Water Quality Standards**

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

Sec. 1. 38 MRSA §361-A, sub-§1-L is enacted to read:

1-L. CFU. "CFU" means colony-forming units.

Sec. 2. 38 MRSA §464, sub-§4, ¶A, as amended by PL 2013, c. 193, §1, is further amended to read:

A. Notwithstanding section 414-A, the department may not issue a water discharge license for any of the following discharges:

(1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that:

(a) Discharges into these waters that were licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist;

(b) Storm water discharges in compliance with state and local requirements are exempt from this subparagraph;

(c) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species are exempt from this subparagraph;

(d) Chemical discharges for the purpose of restoring water quality in GPA waters approved by the department are exempt from this subparagraph;

(e) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species are exempt from this subparagraph. When the department issues a license for the discharge of aquatic pesticides authorized under this division, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website; and

- (f) Discharges of pesticides approved by the department are exempt from this subparagraph that are:
- (i) Unintended and an incidental result of the spraying of pesticides;
 - (ii) Applied in compliance with federal labeling restrictions; and
 - (iii) Applied in compliance with statute, Board of Pesticides Control rules and best management practices;
- (2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;
- (3) Any discharge into a tributary of GPA waters that by itself or in combination with other activities causes water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters ~~except for the following:~~
- ~~(a) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species in the GPA waters or a tributary to the GPA waters; or~~
 - ~~(b) Discharges of pesticides approved by the department that are:~~
 - ~~(i) Unintended and an incidental result of the spraying of pesticides;~~
 - ~~(ii) Applied in compliance with federal labeling restrictions; and~~
 - ~~(iii) Applied in compliance with statute, Board of Pesticides Control rules and best management practices.~~
- (4) Discharge of pollutants to waters of the State that imparts color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class;
- (5) Discharge of pollutants to any water of the State that violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range;
- (6) New discharges of domestic pollutants to the surface waters of the State that are not conveyed and treated in municipal or quasi-municipal sewage facilities. For the purposes of this subparagraph, "new discharge" means any overboard discharge that was not licensed as of June 1, 1987, except discharges from vessels and those discharges that were in continuous existence for the 12 months preceding June 1, 1987, as demonstrated by the applicant to the department with clear and convincing evidence. The volume of the discharge from an overboard discharge facility that was licensed as of June 1, 1987 is determined by the actual or estimated volume from the facilities connected to the overboard discharge facility during the 12 months preceding June 1, 1987 or the volume allowed by the previous license, whichever is less, unless it is found by the department that an error was made during prior licensing. The months during which a discharge may occur from an overboard discharge facility that was licensed as of June 1, 1987 must be determined by the actual use of the facility at the time of the most recent license application prior to June 1, 1987 or the actual use of the facility during the 12 months prior to June 1, 1987, whichever is greater. If the overboard discharge facility was the primary residence of an owner at the time of the most recent license application prior to June 1, 1987 or during the 12 months prior to June 1, 1987, then the facility is considered a year-round residence. "Year-round residence" means a facility that is continuously used for more than 8 months of the year. For purposes of licensing, the department shall treat an increase in the licensed volume or quantity of an existing discharge or an expansion in the months during which the discharge takes place as a new discharge of domestic pollutants;
- (7) After the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under the Federal Water Pollution Control Act, Section 402(c)(1), any proposed license to which the administrator has formally objected under 40 Code of Federal Regulations, Section 123.44, as amended, or any license that would not provide for compliance with applicable requirements of that Act or regulations adopted thereunder;
- (8) Discharges for which the imposition of conditions can not ensure compliance with

applicable water quality requirements of this State or another state;

(9) Discharges that would, in the judgment of the Secretary of the United States Army, substantially impair anchorage or navigation;

(10) Discharges that would be inconsistent with a plan or plan amendment approved under the Federal Water Pollution Control Act, Section 208(b); and

(11) Discharges that would cause unreasonable degradation of marine waters or when insufficient information exists to make a reasonable judgment whether the discharge would cause unreasonable degradation of marine waters.

Notwithstanding subparagraph (6), the department may issue a wastewater discharge license allowing for an increase in the volume or quantity of discharges of domestic pollutants from any university, college or school administrative unit sewage facility, as long as the university, college or school administrative unit has a wastewater discharge license valid on the effective date of this paragraph and the increase in discharges does not violate the conditions of subparagraphs (1) to (5) and (7) to (11) or other applicable laws.

Sec. 3. 38 MRSA §464, sub-§4, ¶D, as amended by PL 1991, c. 159, is further amended to read:

D. Except as otherwise provided in this paragraph, for the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream must be computed using the minimum 7-day low flow ~~which that~~ can be expected to occur with a frequency of once in 10 years. The department may use a different flow rate only for those toxic substances regulated under section 420 and for those nutrients specified in department rules. To use a different flow rate, the department must find that the flow rate is consistent with the risk being addressed.

Sec. 4. 38 MRSA §465, sub-§1, ¶B, as enacted by PL 1985, c. 698, §15, is amended to read:

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters ~~shall~~ must be as naturally occurs, except that the number of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64 CFU per 100 milliliters over a 90-day interval or 236 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 5. 38 MRSA §465, sub-§2, ¶B, as enacted by PL 1985, c. 698, §15, is amended to read:

B. The dissolved oxygen content of Class A waters ~~shall be~~ may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the one-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. The aquatic life and bacteria content of Class A waters ~~shall~~ must be as naturally occurs, except that the numbers of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64 CFU per 100 milliliters over a 90-day interval or 236 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 6. 38 MRSA §465, sub-§3, ¶B, as amended by PL 2005, c. 409, §1, is further amended to read:

B. The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the ~~1-day~~ one-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. ~~Between May 15th and September 30th~~ Between April 15th and September 30th ~~October 31st~~, the number of Escherichia coli bacteria ~~of human and domestic animal origin~~ in these waters may not exceed a geometric mean of 64 CFU per 100 milliliters over a 90-day interval or an instantaneous level of 236 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval. ~~In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures.~~

Sec. 7. 38 MRSA §465, sub-§3, ¶C, as amended by PL 2007, c. 291, §4, is further amended to read:

C. Discharges to Class B waters may not cause adverse impact to aquatic life in that the receiving waters must be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

~~(1) This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the~~

~~purpose of restoring biological communities affected by an invasive species.~~

(1-A) For the purpose of allowing the discharge of aquatic pesticides or chemicals approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency to restore resident biological communities affected by an invasive species, the department may find that the discharged effluent will not cause adverse impact to aquatic life as long as the materials and methods used do not cause a significant loss of any nontarget species and allow restoration of nontarget species. The department may find that an unavoidable, temporary loss of nontarget species does not constitute a significant loss of nontarget species.

(2) For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to aquatic life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

Sec. 8. 38 MRSA §465, sub-§4, ¶B, as repealed and replaced by PL 2005, c. 409, §2, is amended to read:

B. The dissolved oxygen content of Class C water may ~~be not be~~ less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must be maintained. In order to provide additional protection for the growth of indigenous fish, the following standards apply.

(1) The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts per million using a temperature of 22 degrees centigrade or the ambient temperature of the water body, whichever is less, if:

(a) A license or water quality certificate other than a general permit was issued prior to March 16, 2004 for the Class C water and was not based on a 6.5 parts

per million 30-day average dissolved oxygen criterion; or

(b) A discharge or a hydropower project was in existence on March 16, 2005 and required but did not have a license or water quality certificate other than a general permit for the Class C water.

This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

(2) In Class C waters not governed by subparagraph (1), dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

The department may negotiate and enter into agreements with licensees and water quality certificate holders in order to provide further protection for the growth of indigenous fish. Agreements entered into under this paragraph are enforceable as department orders according to the provisions of sections 347-A to 349.

~~Between May April 15th and September 30th October 31st, the number of Escherichia coli bacteria of human and domestic animal origin in Class C waters may not exceed a geometric mean of 426 100 CFU per 100 milliliters over a 90-day interval or an instantaneous level of 236 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures.~~ The board shall adopt rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

Sec. 9. 38 MRSA §465, sub-§4, ¶C, as amended by PL 2005, c. 182, §5, is further amended to read:

C. Discharges to Class C waters may cause some changes to aquatic life, except that the receiving waters must be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community. ~~This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either~~

agency for the purpose of restoring biological communities affected by an invasive species. For the purpose of allowing the discharge of aquatic pesticides or chemicals approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency to restore biological communities affected by an invasive species, the department may find that the discharged effluent will not cause unacceptable changes to aquatic life as long as the materials and methods used will ensure the support of all species of indigenous fish and the structure and function of the resident biological community and will allow restoration of nontarget species.

Sec. 10. 38 MRSA §465-A, sub-§1, ¶B, as amended by PL 2017, c. 137, Pt. B, §2, is further amended to read:

B. Class GPA waters must be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters must have a stable or decreasing trophic state, subject only to natural fluctuations, and must be free of culturally induced algal blooms that impair their use and enjoyment. The number of Escherichia coli bacteria ~~of human and domestic animal origin~~ in these waters may not exceed a geometric mean of 29 CFU per 100 milliliters over a 90-day interval or ~~an instantaneous level of~~ 194 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 11. 38 MRSA §465-B, sub-§1, ¶B, as enacted by PL 1985, c. 698, §15, is amended to read:

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters ~~shall~~ must be as naturally occurs, except that the number of enterococcus bacteria in these waters may not exceed a geometric mean of 8 CFU per 100 milliliters in any 90-day interval or 54 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 12. 38 MRSA §465-B, sub-§2, ¶B, as amended by PL 2005, c. 409, §3, is further amended to read:

B. The dissolved oxygen content of Class SB waters ~~must be~~ may not be less than 85% of saturation. Between ~~May~~ April 15th and ~~September 30th~~ October 31st, the ~~numbers~~ number of enterococcus bacteria ~~of human and domestic animal origin~~ in these waters may not exceed a geometric mean of 8 CFU per 100 milliliters in any 90-day interval or an instantaneous level of 54 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval. ~~In determining human and domestic animal origin, the department shall as-~~

~~sess licensed and unlicensed sources using available diagnostic procedures. The numbers~~ number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.

Sec. 13. 38 MRSA §465-B, sub-§3, ¶B, as amended by PL 2005, c. 409, §4, is further amended to read:

B. The dissolved oxygen content of Class SC waters ~~must be~~ may not be less than 70% of saturation. Between ~~May~~ April 15th and ~~September 30th~~ October 31st, the ~~numbers~~ number of enterococcus bacteria ~~of human and domestic animal origin~~ in these waters may not exceed a geometric mean of 14 CFU per 100 milliliters in any 90-day interval or ~~an instantaneous level of~~ 94 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval. ~~In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The numbers~~ number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.

See title page for effective date.

CHAPTER 320

H.P. 1144 - L.D. 1659

**An Act To Amend Maine's
Marine Resources Laws
Regarding Certain License
Fees and Surcharges That
Were Amended by Recently
Enacted Legislation**

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

Sec. 1. 12 MRSA §6421, sub-§7-B, ¶A, as enacted by PL 2017, c. 284, Pt. EEEEE, §3, is amended to read:

A. For a resident Class I license for applicants under 18 years of age, ~~\$65~~ \$60;

Sec. 2. 12 MRSA §6421, sub-§7-C, ¶¶B to E, as enacted by PL 2017, c. 284, Pt. EEEEE, §3, are amended to read:

B. For a resident Class I license for applicants 18 years of age or older and under 70 years of age,

resident Class II license for applicants 70 years of age or older or resident apprentice license for applicants ~~70~~ 18 years of age or older, \$10;

C. For a resident Class II license for applicants under 70 years of age or resident Class III license for applicants 70 years of age or older, \$20;

D. For a resident Class III license for applicants under 70 years of age, nonresident Class I license for applicants under 18 years of age or a nonresident apprentice license for applicants under 18 years of age, \$30;

E. For a nonresident Class I license for applicants 18 years of age or older or nonresident apprentice license for applicants 18 years of age or older, \$60;

Sec. 3. 12 MRSA §6749-Q, sub-§3, as amended by PL 2007, c. 615, §19, is repealed.

Sec. 4. 12 MRSA §6749-Q, last ¶, as amended by PL 2007, c. 615, §20, is further amended to read:

The commissioner shall deposit all surcharges assessed in this section in the Sea Urchin Research Fund established in section 6749-R, ~~except that fees collected under subsection 3 must be evenly split between the Sea Urchin Research Fund and the Scallop Research Fund established in section 6729-A.~~

See title page for effective date.

CHAPTER 321

H.P. 165 - L.D. 209

An Act To Amend the Laws Governing Temporary Sign Usage

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

Sec. 1. 23 MRSA §1913-A, sub-§1, ¶L, as enacted by PL 2015, c. 403, §4, is amended to read:

L. Temporary signs placed within the public right-of-way for a maximum of ~~6~~ 12 weeks per calendar year. A temporary sign may not be placed within 30 feet of another temporary sign bearing the same or substantially the same message. A temporary sign may not exceed 4 feet by 8 feet in size. A sign under this paragraph must ~~be labeled with~~ include or be marked with the name and address of the individual, entity or organization that placed the sign within the public

right-of-way and the ~~designated time period~~ date the sign ~~will be maintained~~ was erected within the public right-of-way.

See title page for effective date.

CHAPTER 322

H.P. 1163 - L.D. 1675

An Act To Clarify Definitions in the Laws Regarding the Licensing of Eating Establishments and Lodging Places

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

Sec. 1. 5 MRSA §13063, sub-§5, as amended by PL 2011, c. 304, Pt. C, §2 and c. 682, §38, is further amended to read:

5. Retail business permitting program. ~~By February 1, 2012, the~~ The ombudsman shall establish and administer a central permitting program for all permits required by retail businesses selling directly to the final consumer, including, but not limited to, permits required for the operation of hotels and motels, convenience stores and eating ~~and lodging places es-~~ tablishments, and permits required for the sale of liquor or beer, tobacco, food, beverages, lottery tickets and gasoline. Permits issued by the Department of Environmental Protection, the Department of Marine Resources and the Maine Land Use Planning Commission are not included in this program. The ombudsman shall:

- A. Create a consolidated permit procedure that allows each business to check on a cover sheet all state permits for which it is applying and to receive all permit applications from a centralized office;
- B. Total all permit fees due from a business, collect those fees on a semiannual basis, with 1/2 of the total fees due by January 1st and 1/2 of the total fees due by July 1st, and distribute the fees to the appropriate funds or permitting entities;
- C. Forward a copy of the appropriate permit application to any commission, department, municipality or other agency that has responsibility for permitting that retail business;
- D. Develop a tracking system to track permits issued by state agencies. This system must at a minimum include information on the applicant, agency involvement, time elapsed or expended on the permit and action taken;
- E. Coordinate and supervise the permitting process to ensure that all involved state agencies proc-

ess the applications and complete any necessary inspections in a timely fashion; and

F. Respond to inquiries from the business community and requests for information from the individual permitting entities, including reports on the status of an application.

A retail business is not required to participate in the retail business permitting program. An enforcement action taken against a retail business for a permit obtained through the retail business permitting program does not affect other permits issued to that same retail business through that program.

Sec. 2. 22 MRSA §2491, sub-§6, as amended by PL 2011, c. 193, Pt. A, §3, is repealed.

Sec. 3. 22 MRSA §2491, sub-§7, as amended by PL 2013, c. 264, §3, is repealed and the following enacted in its place:

7. Eating establishment. "Eating establishment" means any place where food or drink is prepared and served or served to the public for consumption on the premises or prepared and served or served ready to eat to the public for consumption off the premises. "Eating establishment" includes places in the entertainment, hospitality, recreation, restaurant and tourism industries; catering establishments; correctional facilities; hospital cafeterias; mobile eating places; public and private schools; retail frozen dairy product establishments; and workplace eating establishments and places where food is prepared for vending machines dispensing food other than in original sealed packages. "Eating establishment" does not include:

A. A place preparing and serving food that is licensed pursuant to state law by a state agency other than the department as long the licensing of the place includes regular food safety inspections;

B. A place serving food only to residents, such as a boarding home, a retirement home or an independent living place; and

C. A farm stand that offers only whole, uncut fresh fruits and vegetables.

Sec. 4. 22 MRSA §2492, sub-§1, ¶B, as enacted by PL 2003, c. 452, Pt. K, §20 and affected by Pt. X, §2, is repealed.

Sec. 5. 22 MRSA §2494, first ¶, as amended by PL 2011, c. 193, Pt. B, §1, is further amended to read:

Each application for, or for renewal of, a license to operate an eating establishment, ~~eating and lodging place~~, lodging place, recreational camp, youth camp or campground within the meaning of this chapter must be accompanied by a fee, appropriate to the size of the establishment, place, camp or area of the licensee, determined by the department and not to exceed the fees listed below. All fees collected by the department

must be deposited into a special revenue account established for this purpose. No such fee may be refunded. No license may be assignable or transferable. The fees may not exceed:

Sec. 6. 22 MRSA §2495, first ¶, as amended by PL 2011, c. 193, Pt. B, §3, is further amended to read:

The department shall, within 30 days following receipt of application, issue an annual license to operate any eating establishment, ~~eating and lodging place~~, lodging place, recreational camp, youth camp or campground that is found to comply with this chapter and the rules adopted by the department.

Sec. 7. 22 MRSA §2498, sub-§1, as amended by PL 2013, c. 264, §6, is further amended to read:

1. Authorization. The department is authorized to impose one or more of the following sanctions when a violation of this chapter, or rules enacted pursuant to this chapter, occurs and the department determines that a sanction is necessary and appropriate to ensure compliance with state licensing rules or to protect the public health.

A. The department may impose penalties for violations of this chapter, or the rules adopted pursuant to this chapter, on any eating establishment, ~~eating and lodging place~~, lodging place, recreational camp, youth camp, public pool or public spa or campground. The penalties may not be greater than \$100 for each violation. Each day that the violation remains uncorrected may be counted as a separate offense. Penalties may be imposed for each violation of the rules.

B. The department may direct an eating establishment, ~~eating and lodging place~~, lodging place, recreational camp, youth camp, public pool or public spa or campground to correct any violations in a manner and within a time frame that the department determines is appropriate to ensure compliance with state rules or to protect the public health. Failure to correct violations within the time frames constitutes a separate finable violation.

C. Any person, corporation, firm or copartnership that operates any eating establishment, ~~eating and lodging place~~, lodging place, recreational camp, youth camp, public pool or public spa or campground without first obtaining a license as required by this chapter must be punished, upon adjudication of unlicensed operation, by a fine of not less than \$25 nor more than \$200, and upon a 2nd or subsequent adjudication of unlicensed operation must be punished by a fine of not less than \$200 nor more than \$500. Each day any such person, corporation, firm or copartnership operates without obtaining a license constitutes a separate offense.

D. In the event of any violation of this section or any rule pursuant to this chapter, the Attorney General may seek to enjoin a further violation, in addition to any other remedy.

E. A person, corporation, firm or copartnership that fails to pay a penalty imposed pursuant to this chapter:

- (1) May be referred to the Attorney General for appropriate enforcement action; and
- (2) In addition to all fines and penalties imposed pursuant to this chapter, is liable for any interest, costs and fees incurred by the department, including attorney's fees.

Sec. 8. 25 MRSA §2468, sub-§2, ¶A, as amended by PL 2015, c. 396, §1, is further amended to read:

A. Each unit in any building of multifamily occupancy; a fraternity house, sorority house or dormitory that is affiliated with an educational facility; a children's home, emergency children's shelter, children's residential care facility, shelter for homeless children or specialized children's home as defined in Title 22, section 8101; or a hotel, motel, inn or bed and breakfast licensed as an eating ~~and lodging place establishment~~ or a lodging place under Title 22, chapter 562. The owner shall use a carbon monoxide detector that is powered by:

- (1) Both the electrical service in the building and a battery;
- (2) A nonreplaceable 10-year battery; or
- (3) A replaceable battery if the carbon monoxide detector uses a low-power radio frequency wireless communication signal, uses multiple sensors, has low-frequency audible notification capability or is connected to a control panel;

Sec. 9. 25 MRSA §2468, sub-§4, ¶B, as enacted by PL 2011, c. 553, §2, is amended to read:

B. A hotel, motel, inn or bed and breakfast upon initial licensure of that new construction as an eating ~~and lodging place establishment~~ or a lodging place under Title 22, chapter 562 on or after August 1, 2012; or

See title page for effective date.

**CHAPTER 323
H.P. 1142 - L.D. 1657**

An Act To Update the Allowance Budget for the Regional Greenhouse Gas Initiative

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

Sec. 1. 38 MRSA §580-B, sub-§3, as amended by PL 2013, c. 369, Pt. D, §4, is further amended to read:

3. Base annual budget. Until January 1, 2014, the base annual carbon dioxide emissions budget is established at 5,948,902 tons of carbon dioxide. For the year 2014, the base annual carbon dioxide emissions budget is established at 3,277,250 tons of carbon dioxide. Beginning with the year 2015, the annual carbon dioxide emissions budget must decline by 2.5% each year through the year 2020. For the year 2021, the department shall establish the base annual carbon dioxide emissions budget in accordance with the model rule and with rules adopted pursuant to subsection 4. Beginning with the year 2022, the annual carbon dioxide emissions budget must decline by 2.5% of the 2014 base annual carbon dioxide emissions budget each year through the year 2030.

Sec. 2. 38 MRSA §580-B, sub-§3-A, as enacted by PL 2013, c. 369, Pt. D, §5, is amended to read:

3-A. Interim adjustments for banked allowances. The 2014 base annual carbon dioxide emissions budget of 3,277,250 tons of carbon dioxide and base annual budgets for 2015 to 2020 must be reduced by an amount equivalent to the quantity of banked allowances in excess of the quantity of allowances required for compliance at the end of 2013. The base annual carbon dioxide emissions budgets for 2021 to 2025 must be reduced by an amount equivalent to the quantity of banked allowances in excess of the quantity of allowances required for compliance at the end of 2020. The State's interim adjustments for banked allowances must be made in proportion to the State's share of the total annual carbon dioxide emissions budget for all states participating in the regional greenhouse gas initiative.

See title page for effective date.

CHAPTER 324
H.P. 1173 - L.D. 1693

**An Act To Clarify the Law
Governing the Separation of a
Class A Restaurant and an
Off-premises Retail Licensee
Located on the Same Premises**

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

Sec. 1. 28-A MRSA §10, sub-§4, as amended by PL 2013, c. 344, §1, is further amended to read:

4. Application. This section does not apply to a ~~dual license holder licensed under section 1208;~~

- A. A dual license holder under section 1208; or
- B. A manufacturing facility licensed under section 1355-A at the same location as a retail establishment authorized by section 1355-A, subsection 2, paragraph I.

See title page for effective date.

CHAPTER 325
H.P. 1213 - L.D. 1759

**An Act To Rename the Coast
of Maine Wildlife Management
Area as the Alan E. Hutchinson
Wildlife Management Area**

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

Sec. 1. 12 MRSA §12708, sub-§1, ¶B, as amended by PL 2013, c. 408, §21, is further amended to read:

- B. The following areas are classified as state-owned wildlife management areas, or "WMAs":
 - (1) Blanchard/AuClair WMA (Roach River Corridor) - T1 R14 WELS - Piscataquis County;
 - (2) Major Gregory Sanborn WMA - Brownfield, Denmark, Fryeburg - Oxford County;
 - (3) George Bucknam WMA (Belgrade Stream) - Mt. Vernon - Kennebec County;
 - (4) Caesar Pond WMA - Bowdoin - Sagadahoc County;
 - (5) Chesterville WMA - Chesterville - Franklin County;
 - (6) ~~Coast of Maine~~ Alan E. Hutchinson WMA - all state-owned coastal islands that

are owned or managed by the Department of Inland Fisheries and Wildlife;

- (7) Dickwood Lake WMA - Eagle Lake - Aroostook County;
- (8) Francis D. Dunn WMA (Sawtelle Deadwater) - T6 R7 WELS - Penobscot County;
- (9) Fahi Pond WMA - Embden - Somerset County;
- (10) Lyle Frost WMA (formerly Scammon) - Eastbrook, Franklin - Hancock County;
- (11) Alonzo H. Garcelon WMA (Mud Mill Flowage) - Augusta, Windsor, Vassalboro, China - Kennebec County;
- (12) Great Works WMA - Edmunds Township - Washington County;
- (13) Jamies Pond WMA - Manchester, Farmingdale, Hallowell - Kennebec County;
- (14) Jonesboro WMA - Jonesboro - Washington County;
- (15) Earle R. Kelley WMA (Dresden Bog) - Alna, Dresden - Lincoln County;
- (16) Kennebunk Plains WMA - Kennebunk - York County;
- (17) Bud Leavitt WMA (Bull Hill) - Atkinson, Charleston, Dover-Foxcroft, Garland - Penobscot County and Piscataquis County;
- (18) Gene Letourneau WMA (Frye Mountain) - Montville, Knox, Morrill - Waldo County;
- (19) Long Lake WMA - St. Agatha - Aroostook County (all of Long Lake within the Town of St. Agatha);
- (20) Madawaska WMA - Palmyra - Somerset County;
- (20-A) Maine Youth Conservation WMA - T32MD - Hancock County;
- (21) Mainstream WMA - Cambridge, Ripley - Somerset County;
- (22) Lt. Gordon Manuel WMA - Hodgdon, Cary Plantation, Linneus - Aroostook County;
- (23) Maynard F. Marsh WMA (Killick Pond) - Hollis, Limington - York County;
- (24) Mercer Bog WMA - Mercer - Somerset County;
- (25) Merrymeeting Bay WMA - Dresden, Bowdoinham, Woolwich, Bath, Topsham - Lincoln County and Sagadahoc County;

- (26) Morgan Meadow WMA - Raymond - Cumberland County;
- (27) Mt. Agamenticus WMA - York, South Berwick - York County;
- (28) Muddy River WMA - Topsham - Sagadahoc County;
- (29) Narraguagus Junction WMA - Cherryfield - Washington County;
- (30) Old Pond Farm WMA - Maxfield, Howland - Penobscot County;
- (31) Orange River WMA - Whiting - Washington County;
- (32) Peaks Island WMA - Portland - Cumberland County;
- (33) Pennamaquam WMA - Pembroke, Charlotte - Washington County;
- (34) Steve Powell WMA - Perkins Township - Sagadahoc County (being the islands in the Kennebec River near Richmond known as Swan Island and Little Swan Island, formerly known as Alexander Islands);
- (35) David Priest WMA (Dwinal Pond) - Lee, Winn - Penobscot County;
- (36) James Dorso Ruffingham Meadow WMA - Montville, Searsmont - Waldo County;
- (37) St. Albans WMA - St. Albans - Somerset County;
- (38) Sandy Point WMA - Stockton Springs - Waldo County;
- (39) Scarborough WMA - Scarborough, Old Orchard Beach, Saco - Cumberland County and York County;
- (40) Steep Falls WMA - Standish, Baldwin - Cumberland County;
- (41) Tyler Pond WMA - Manchester, Augusta - Kennebec County;
- (42) Vernon S. Walker WMA - Newfield, Shapleigh - York County;
- (43) R. Waldo Tyler Weskeag Marsh WMA - South Thomaston, Thomaston, Rockland, Owl's Head, Friendship - Knox County;
- (43-A) Kennebec River Estuary WMA - Arrowsic, Bath, Georgetown, Phippsburg, West Bath, Woolwich - Sagadahoc County;
- (43-B) Tolla Wolla WMA - Livermore - Androscoggin County;
- (43-C) Green Point WMA - Dresden - Lincoln County;
- (43-D) Hurds Pond WMA - Swanville - Waldo County;
- (43-E) Sherman Lake WMA - Newcastle, Damariscotta - Lincoln County;
- (43-F) Ducktrap River WMA - Belmont, Lincolnville - Waldo County;
- (45) Stump Pond WMA - New Vineyard - Franklin County;
- (46) Bog Brook WMA - Beddington, Deblois - Washington County;
- (47) Cobscook Bay WMA - Lubec, Pembroke, Perry, Trescott Township - Washington County;
- (48) Mattawamkeag River System WMA - Drew Plantation, Kingman Township, Prentiss Township, Webster Township - Penobscot County;
- (49) Booming Ground WMA - Forest City - Washington County;
- (50) Butler Island WMA - Ashland - Aroostook County;
- (51) Pollard Flat WMA - Masardis - Aroostook County;
- (52) Caribou Bog WMA - Old Town, Orono - Penobscot County;
- (53) Delano WMA - Monson - Piscataquis County;
- (54) Egypt Bay WMA - Hancock - Hancock County;
- (55) Spring Brook WMA - Hancock - Hancock County;
- (56) Strong WMA - Strong - Franklin County;
- (57) Plymouth Bog WMA - Plymouth - Penobscot County; and
- (58) Such other areas as the commissioner designates, by rules adopted in accordance with section 12701, as state-owned wildlife management areas.

See title page for effective date.

**CHAPTER 326
H.P. 921 - L.D. 1327**

**An Act To Expedite Health
Care Employment for Military
Veterans**

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

Sec. 1. 26 MRSA c. 29 is enacted to read:

CHAPTER 29

**HEALTH CARE EMPLOYMENT FOR
MILITARY VETERANS**

§2131. Definitions

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

1. Apprentice. "Apprentice" has the same meaning as in section 3201, subsection 1.

2. Department. "Department" means the Department of Labor.

3. Eligible veteran. "Eligible veteran" means:

A. A person who currently serves in the United States Armed Forces, the National Guard of any state or the Reserves of the United States Armed Forces and who has obtained health care-related military training or experience; or

B. A person who was discharged or released under conditions other than dishonorable and who has completed health care-related military training or experience in the United States Armed Forces, the National Guard of any state or the Reserves of the United States Armed Forces.

4. National certification. "National certification" means a credential from a national organization or national board that evaluates the qualifications and competency of individuals to practice in a specific occupation and includes but is not limited to a credential issued following passage of an examination administered by the organization or board.

5. Program. "Program" means the Health Care Employment for Military Veterans Program established in section 2132.

**§2132. Health Care Employment for Military
Veterans Program**

1. Establishment; purpose. The department shall, using existing resources and available grant funding, establish and implement in accordance with this section the Health Care Employment for Military Veterans Program to assist eligible veterans who desire to obtain employment in civilian health care occupations in the State.

2. Evaluation of military health care occupational specialties. The department, in implementing the program, shall create a document, referred to in this subsection as "the military-to-civilian crosswalk," that describes the military training and experience that members of the United States Armed Forces, the National Guard of any state or the Reserves of the United States Armed Forces are required to complete to engage in various military health care occupational specialties and compares that required military training and experience with the education and training requirements for equivalent or similar civilian health care occupations in this State. The military-to-civilian crosswalk must include information to assist eligible veterans, occupational licensing boards and postsecondary education institutions in the State in determining:

A. The gaps that exist between the military training and experience obtained by individuals who served in specific military health care occupational specialties and the education and experience required to obtain national certification in equivalent or similar civilian health care occupations; and

B. The gaps that exist between the military training and experience obtained by individuals who served in specific military health care occupational specialties and the education and experience required to obtain any required licensure or certification to perform an equivalent or similar civilian health care occupation in this State.

3. Direct assistance to eligible veterans. The department, in implementing the program, shall provide direct assistance to eligible veterans. The department shall:

A. Assist eligible veterans in compiling comprehensive portfolios of their military training and experience;

B. Collaborate with postsecondary education institutions in the State to assist eligible veterans in receiving academic credit for experience, education and training the eligible veterans obtained during military service; and

C. Advocate for eligible veterans who request assistance in enrolling in postsecondary education programs in the State or in securing employment in a health care occupation in the State.

4. Coordination with the Maine Apprenticeship Program. The department shall ensure collaboration between the program and the Maine Apprenticeship Program, established in section 3202, to recruit employers in the State to sponsor eligible veterans to serve as apprentices in health care occupations.

5. Priority. If the number of eligible veterans seeking assistance from the program exceeds the ca-

capacity of the program, the program shall give priority to eligible veterans who were discharged or released from military service no longer than 2 years prior to seeking assistance.

See title page for effective date.

CHAPTER 327

H.P. 1172 - L.D. 1692

An Act To Amend the Motor Vehicle Laws

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

Sec. 1. 29-A MRSA §456, sub-§1, as amended by PL 1995, c. 645, Pt. A, §2 and affected by §18, is further amended to read:

1. University of Maine System plate. The Secretary of State, upon receiving an application and evidence of payment of the excise tax required by Title 36, section 1482, the registration fee required by section 501 or section 504 and the administrative fee and voluntary contribution provided for in subsection 2, shall issue a registration certificate and a set of University of Maine System registration plates to be used in lieu of regular registration plates. These plates must bear identification numbers and letters.

Sec. 2. 29-A MRSA §456-A, sub-§1, as amended by PL 2009, c. 435, §2, is further amended to read:

1. Lobster plates. The Secretary of State, upon receiving an application and evidence of payment of the excise tax required by Title 36, section 1482, the annual motor vehicle registration fee required by section 501 or section 504 and the contribution provided for in subsection 2, shall issue a registration certificate and a set of lobster special registration plates to be used in lieu of regular registration plates. These plates must bear identification numbers and letters. The Secretary of State may issue lobster plates to certain state-owned vehicles in accordance with section 517.

Sec. 3. 29-A MRSA §456-A, sub-§8, as amended by PL 2015, c. 473, §§5 and 6, is repealed.

Sec. 4. 29-A MRSA §456-B, sub-§1, as enacted by PL 2001, c. 623, §4, is amended to read:

1. Maine Black Bears plates. The Secretary of State, upon receiving an application and evidence of payment of the excise tax required by Title 36, section 1482, the annual motor vehicle registration fee required by section 501 or section 504 and the contribution provided for in subsection 2, shall issue a registration certificate and a set of Maine Black Bears special registration plates to be used in lieu of regular registra-

tion plates. These plates must bear identification numbers and letters.

Sec. 5. 29-A MRSA §456-B, sub-§8, as amended by PL 2007, c. 383, §4, is repealed.

Sec. 6. 29-A MRSA §456-C, sub-§1, as amended by PL 2013, c. 496, §4, is further amended to read:

1. Sportsman registration plates. The Secretary of State, upon receiving an application and evidence of payment of the registration fee required by section 501 or section 504 and the excise tax required by Title 36, section 1482, shall issue a registration certificate and a set of sportsman plates to be used in lieu of regular registration plates. These plates must bear identification numbers and letters. Vanity plates may not duplicate vanity plates issued in another class of plate. The Secretary of State shall begin issuing sportsman registration plates by April 1, 2008. Sportsman vanity plates are issued in accordance with this section and section 453.

Sec. 7. 29-A MRSA §456-D, sub-§1, as repealed and replaced by PL 2007, c. 703, §7, is amended to read:

1. We Support Our Troops plates. The Secretary of State, upon receiving an application and evidence of payment of the excise tax required by Title 36, section 1482, the registration fee required by section 501 or section 504 and the administrative fee and contribution provided for in subsection 2, shall issue a registration certificate and a set of We Support Our Troops plates to be used in lieu of regular registration plates. These plates must bear identification numbers and letters.

Sec. 8. 29-A MRSA §456-D, sub-§6, as repealed and replaced by PL 2007, c. 703, §7, is repealed.

Sec. 9. 29-A MRSA §456-E, sub-§1, as enacted by PL 2007, c. 547, §2, is amended to read:

1. Breast cancer support services plates. The Secretary of State, upon receiving an application and evidence of payment of the excise tax required by Title 36, section 1482, the annual motor vehicle registration fee required by section 501 or section 504 and the contribution provided for in subsection 2, shall issue a registration certificate and a set of breast cancer support services special registration plates to be used in lieu of regular registration plates. These plates must bear identification numbers and letters.

Sec. 10. 29-A MRSA §456-E, sub-§8, as enacted by PL 2007, c. 547, §2, is repealed.

Sec. 11. 29-A MRSA §456-G, sub-§1, as enacted by PL 2009, c. 73, §1, is amended to read:

1. Support Animal Welfare plates. The Secretary of State, upon receiving an application and evi-

dence of payment of the excise tax required by Title 36, section 1482, the annual motor vehicle registration fee required by section 501 or section 504 and the contribution provided for in subsection 2, shall issue a registration certificate and a set of Support Animal Welfare special registration plates to be used in lieu of regular registration plates.

Sec. 12. 29-A MRSA §456-G, sub-§8, as enacted by PL 2009, c. 73, §1, is repealed.

Sec. 13. 29-A MRSA §468, first ¶, as amended by PL 2007, c. 383, §5, is further amended to read:

The Secretary of State may not issue a specialty license plate until the sponsor has met all of the requirements of this section and the proposed specialty license plate legislation as required in subsection 7 is reviewed by the joint standing committee of the Legislature having jurisdiction over transportation matters and approved by the Legislature. For the purposes of this ~~section~~ subchapter, "specialty license plate" means a specially designed registration plate that may be used in place of the regular plate and registration for fundraising purposes. The Secretary of State shall administer a specialty license plate in accordance with the following provisions.

Sec. 14. 29-A MRSA §468, sub-§8, as amended by PL 2007, c. 383, §5, is further amended to read:

8. Weight limit. ~~A~~ Except as provided under section 456-F, subsection 7, paragraph B, a specialty license plate under this subchapter may be issued for an automobile or pickup truck that does not exceed 10,000 26,000 pounds registered weight.

Sec. 15. 29-A MRSA §468, sub-§9, as enacted by PL 2007, c. 383, §5, is amended to read:

9. Limit on authorization. The Secretary of State shall retire and cease to issue any plate authorized after January 1, 2007 ~~upon the occurrence of the earlier of:~~ if the number of registrations falls below 4,000 for more than one year.

~~A. When the number of sets of the plate issued falls below 4,000 for more than one year; and~~

~~B. Ten years after the date of authorization.~~

Sec. 16. 29-A MRSA §562, sub-§3, as amended by PL 2009, c. 598, §24, is repealed and the following enacted in its place:

3. Powers and duties. The board may advise the Secretary of State on matters related to motor carrier safety, including advising the Secretary of State on a methodology for the Secretary of State to use to review motor carriers for the purpose of suspending carriers with adverse safety records.

The board shall hold a hearing upon the appeal of a motor carrier whose privilege to operate a commercial motor vehicle has been suspended by the Secretary of State upon the recommendation of the bureau or whose privilege to operate a commercial motor vehicle has been suspended by the Secretary of State pursuant to section 2458, subsection 2, paragraph V. The board's decision must include a recommendation that the Secretary of State uphold, modify or rescind the suspension. The hearing must be conducted in accordance with the Maine Administrative Procedure Act.

Sec. 17. 29-A MRSA §562, sub-§4, as enacted by PL 1995, c. 376, §3, is amended to read:

4. Rules. The board may adopt rules pursuant to the Maine Administrative Procedure Act to carry out the purposes of this section. Rules adopted by the board may include authorizing the bureau to suspend a motor carrier's privilege to operate a commercial motor vehicle upon the bureau's review of the safety record of the motor carrier.

Sec. 18. 29-A MRSA §1411, as enacted by PL 2007, c. 251, §1, is repealed.

Sec. 19. 29-A MRSA §2458, sub-§2, ¶T, as amended by PL 2007, c. 438, §3, is further amended to read:

T. Has failed to comply with the provisions of Title 36, chapter 459; ~~or~~

Sec. 20. 29-A MRSA §2458, sub-§2, ¶U, as enacted by PL 2005, c. 433, §24 and affected by §28, is amended to read:

U. Has failed to provide the information required in section 401, subsection 2; ~~or~~

Sec. 21. 29-A MRSA §2458, sub-§2, ¶V is enacted to read:

V. Has exceeded the motor carrier adverse safety limits established by the Secretary of State using the methodology developed pursuant to section 562, subsection 3.

See title page for effective date.

CHAPTER 328

H.P. 1157 - L.D. 1670

An Act To Revise the Grandparents Visitation Act

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

Sec. 1. 19-A MRSA §1802, sub-§2 is enacted to read:

2. Sufficient existing relationship. "Sufficient existing relationship" means a relationship involving

extraordinary contact between a grandparent and a child, including but not limited to circumstances in which the grandparent has been a primary caregiver and custodian of the child for a significant period of time.

Sec. 2. 19-A MRSA §1803, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Standing to seek grandparent visitation rights. A grandparent of a minor child ~~may petition the court~~ has standing to initiate and maintain an action for reasonable rights of visitation or access if:

~~A. At least one of the child's parents or legal guardians has died;~~

B. There is a sufficient existing relationship between the grandparent and the child; or

~~C. When a sufficient existing relationship between the grandparent and the child does not exist, a sufficient effort to establish one has been made.~~

D. Any other compelling state interest justifies the court's interference with the parent's fundamental right to deny the grandparent access to the child.

Sec. 3. 19-A MRSA §1803, sub-§2, as amended by PL 2005, c. 360, §3, is further amended to read:

2. Procedure. The following procedures apply to petitions for rights of visitation or access under subsection 1, ~~paragraph B or C.~~

~~A. The A grandparent must seeking rights of visitation or access shall file with the petition for rights of visitation or access initial pleadings an affidavit alleging a sufficient existing relationship with the child, or that sufficient efforts have been made to establish a relationship with the child. When the petition and accompanying affidavit are filed with the court, the grandparent shall serve a copy of both on at least one of the parents or legal guardians of the child under oath sufficient facts to support the grandparent's standing under subsection 1. The pleadings and affidavit must be served upon all parents and legal guardians of the child.~~

~~B. The A parent or legal guardian of the child may file who files a pleading in response to the pleadings in paragraph A shall also file an affidavit in response to the grandparent's petition and accompanying affidavit. When the affidavit in response is filed with the court, the parent or legal guardian shall deliver a copy to the grandparent, serving all parties to the proceeding with a copy.~~

~~C. The court shall determine on the basis of the petition pleadings and the affidavit affidavits un-~~

~~der paragraphs A and B whether it is more likely than not that there is a sufficient existing relationship or, if a sufficient relationship does not exist, that a sufficient effort to establish one has been made the grandparent has presented prima facie evidence of standing under subsection 1. The court may in its sole discretion, if necessary and on an expedited basis, hold a hearing to determine disputed facts that are necessary and material to the issue of standing.~~

D. If the court's determination under paragraph C is in the affirmative, the court may appoint a guardian ad litem as provided in section 1507. The court shall hold a hearing on the grandparent's petition for reasonable rights of visitation or access and shall consider any objections the parents or legal guardians may have concerning the award of rights of visitation or access to the grandparent. If the court has appointed a guardian ad litem, the court shall also consider the report of the guardian ad litem. The standard for the award of reasonable rights of visitation or access is provided in subsection 3.

Sec. 4. 19-A MRSA §1803, sub-§3, as amended by PL 2001, c. 665, §§5 and 6, is further amended to read:

3. Best interest of the child. The court may grant a grandparent reasonable rights of visitation or access to a minor child upon finding that the grandparent has standing under subsection 1 and that granting the grandparent reasonable rights of visitation or access are is in the best interest of the child and would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the child. ~~In applying this standard deciding whether granting the grandparent reasonable rights of visitation or access is in the best interest of the child and whether it would significantly interfere with the parent-child relationship or with the parent's rightful authority over the child,~~ the court shall consider the following factors:

A. The age of the child;

B. The relationship of the child with the child's grandparents, including the amount of previous contact;

B-1. Whether one or more of the child's parents or legal guardians has died;

C. The preference of the child, if old enough to express a meaningful preference;

D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;

E. The stability of any proposed living arrangements for the child;

F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;

G. The child's adjustment to the child's present home, school and community;

H. The capacity of the parent and grandparent to cooperate or to learn to cooperate in child care;

I. Methods of assisting cooperation and resolving disputes and each person's willingness to use those methods;

J. Any other factor having a reasonable bearing on the physical and psychological well-being of the child; and

K. The existence of a grandparent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203.

Sec. 5. 19-A MRSA §1804, first ¶, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

The court may refer the parties to mediation at any time after ~~the petition is filed~~ a court determination pursuant to section 1803, subsection 2, paragraph C that the grandparent has standing and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation.

Sec. 6. 19-A MRSA §1806 is enacted to read:

§1806. Other actions

Nothing in this chapter limits a grandparent's ability to file any action not governed by the provisions of this chapter with respect to a child, including but not limited to an action to establish de facto parentage of a child under section 1891, an action for guardianship of a child under Title 18-A, Article 5 and a child protection petition under Title 22, section 4032, subsection 1, paragraph C.

See title page for effective date.

**CHAPTER 329
H.P. 1166 - L.D. 1678**

**An Act To Amend the Laws
Affecting the Judicial Branch
Regarding Railroad Trespass
Civil Violations and Fines for
Civil Violations**

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

Sec. 1. 4 MRSA §171-A, sub-§2, as enacted by PL 1991, c. 733, §1, is amended to read:

2. Civil violations. When a complaint is made to the proper officer of the District Court charging a person with the commission of a civil violation other than a traffic infraction, the officer of the District Court shall cause to be served upon the person a Uniform Summons and Complaint or other process in such form and under such circumstances as the Supreme Judicial Court shall by rule provide. The clerk of each division may accept an admission to a civil violation upon payment of a fine and surcharge in accordance with a schedule of violations, fines and surcharges, within the limits prescribed by law, established by the Chief Judge, which the Chief Judge may amend.

Sec. 2. 23 MRSA §7007, sub-§3, ¶¶A to C, as amended by PL 2015, c. 204, §1, are further amended to read:

A. A person who violates subsection 1 commits a ~~civil violation~~ traffic infraction for which a fine of not less than \$50 and not more than \$100 may be adjudged.

B. A person who violates subsection 1 after having previously violated subsection 1 commits a ~~civil violation~~ traffic infraction for which a fine of not less than \$250 and not more than \$500 may be adjudged.

C. A person who violates subsection 1 after having previously violated subsection 1 2 times commits a ~~civil violation~~ traffic infraction for which a fine of not less than \$750 and not more than \$1,000 may be adjudged.

See title page for effective date.

**CHAPTER 330
H.P. 1167 - L.D. 1679**

**An Act Regarding the Registry
of Deeds in Oxford County**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until

90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation affects the position of register of deeds for Oxford County and eliminates the position of western district register of deeds in Oxford County; and

Whereas, it is necessary that certain provisions of this legislation take effect immediately to ensure the Oxford County general elections in November 2018, and the associated June 2018 primary elections, are conducted in accordance with elimination of the western district register of deeds effective December 31, 2018; 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. 33 MRSA §702 is amended to read:

§702. Western district office in Oxford County

The Towns of Hiram, Porter, Brownfield, Denmark, Fryeburg, Sweden, Lovell, Stoneham and ~~Stowe~~ Stow, in the County of Oxford, compose the western registry district of Oxford County and the register shall keep ~~his~~ the register's office at Fryeburg.

This section is repealed December 31, 2018.

Sec. 2. Register of deeds in Oxford County; November 2018 election. Notwithstanding the Maine Revised Statutes, Title 33, section 602, at the November 2018 general election, the legally qualified voters of Oxford County shall elect a single register of deeds for Oxford County to a 4-year term, and there may not be an election for a register of deeds for the western registry district of Oxford County described in Title 33, section 702.

Sec. 3. Western registry district transition; western subregistry. The register of deeds of the western registry district of Oxford County and the western district office in the Town of Fryeburg shall continue to operate and function as provided in the Maine Revised Statutes, Title 33, section 702 until December 31, 2018. Effective January 1, 2019, the Oxford County register of deeds shall maintain a western subregistry of deeds that maintains all records of the former western registry district. Except as provided in section 4 of this Act, the Oxford County register of deeds shall operate a western subregistry office in the Town of Fryeburg at the same location as the former western registry district office and the office must be open for recording and research activities during normal business hours.

Sec. 4. Conditions for closure of Oxford County western subregistry. The Oxford County Commissioners may close the western subregistry office in the Town of Fryeburg only if the commissioners have completed the following:

1. Conducted at least 2 public hearings in the area covered by the towns of Hiram, Porter, Brownfield, Denmark, Fryeburg, Sweden, Lovell, Stoneham and Stow; these hearings must be conducted at least 90 days prior to the vote conducted pursuant to subsection 2;
2. Voted to close the western subregistry office in Fryeburg on a date certain;
3. Duplicated all historical maps and plot plans on display or available at the western subregistry office and offered and provided copies of those maps and plot plans to member towns for display or for the towns to make them available at their town offices;
4. Made provisions for the preservation of, and public access to, the record books of the western subregistry of deeds;
5. Provided online access to all files and documents of the Oxford County registry of deeds and the western subregistry of deeds;
6. Made available electronic recording of documents in the Oxford County registry of deeds and the western subregistry of deeds; and
7. Provided electronic recording of documents at no additional cost or surcharge to the municipal governments in Oxford County.

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

Effective March 7, 2018.

CHAPTER 331
S.P. 617 - L.D. 1681

An Act To Correct a Technical Error Pertaining to the Dairy Improvement Fund

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

Whereas, the Maine Revised Statutes, Title 7, section 2910-B and Title 10, section 1023-P establish the Dairy Improvement Fund to provide loans to assist dairy farmers in making capital improvements to maintain and enhance the viability of their farms; and

Whereas, a technical error during the initial creation of the fund resulted in a failure to provide for a base allocation of funds to the Finance Authority of Maine for the provision of loans and to pay the costs of administering the fund; and

Whereas, this allocation of funds is necessary to begin operation of the loan program 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:

Sec. 1. Appropriations and allocations. The following appropriations and allocations are made.

FINANCE AUTHORITY OF MAINE

Dairy Improvement Fund Z143

Initiative: Provides a base allocation to authorize expenditures of funds received by the Finance Authority of Maine to provide loans to assist dairy farmers in making capital improvements and to pay the administrative costs of administering the fund.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$500	\$500
	\$500	\$500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$500	\$500

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

Effective March 7, 2018.

CHAPTER 332

S.P. 661 - L.D. 1776

An Act To Establish Requirements for Civil Deputies

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

Sec. 1. 14 MRSA §702, as amended by PL 1987, c. 223, §1, is further amended to read:

§702. Duty of sheriffs, deputies and civil deputies; fees

Every sheriff and each of ~~his~~ the sheriff's deputies and civil deputies, as defined in Title 30-A, section 351, subsection 5, shall serve and execute, within ~~his~~ the sheriff's county, all writs and precepts issued by lawful authority ~~to him~~ directed and committed to the sheriff, including those in which a town, plantation, or parish of which the sheriff is a resident, or religious society or school district, of which ~~he~~ the sheriff is at the time a member, is a party or interested, but ~~his~~ the sheriff's legal fees for service ~~shall~~ must first be paid or secured to ~~him~~ the sheriff. If the fees are not paid or secured to ~~him~~ the sheriff when the process is delivered to ~~him~~ the sheriff, ~~he~~ the sheriff shall immediately return it to the plaintiff or attorney offering it; or if sent to ~~him~~ the sheriff by mail or otherwise, ~~he~~ the sheriff shall put it into ~~some~~ a post office within 24 hours, directed to the person sending it; otherwise ~~he~~ the sheriff waives ~~his~~ the sheriff's right to ~~his~~ the sheriff's fees before service.

Sec. 2. 14 MRSA §709 is amended to read:

§709. Service on deputy sheriff or civil deputy sheriff

Any writ or precept in which the deputy or civil deputy, as defined in Title 30-A, section 351, subsection 5, of a sheriff is a party may be served by any other deputy or civil deputy of the same sheriff.

Sec. 3. 30-A MRSA §104, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§104. Execution of process

Sheriffs and their deputies and constables shall execute all legal processes directed to them by the commissioners. A civil deputy, as defined in section 351, subsection 5, shall serve civil process as directed by the sheriff.

Sec. 4. 30-A MRSA §351, sub-§5 is enacted to read:

5. Civil deputy. "Civil deputy" means a deputy who meets the requirements for a civil deputy adopted by the sheriff and has been designated by the sheriff to enforce civil laws and serve civil process.

Sec. 5. 30-A MRSA §381, sub-§6 is enacted to read:

6. Exceptions for civil deputies. The provisions of subsections 1 to 5 do not apply to civil deputies. The sheriff may designate one or more persons to serve as civil deputies to enforce civil laws and serve civil process in accordance with the state rules of court. A civil deputy holds no other law enforcement powers. A civil deputy is compensated under section 386, subsection 4. The sheriff may adopt rules, proce-

dures and requirements related to the qualifications and training of a civil deputy and the service of civil process.

Sec. 6. 30-A MRSA §386, sub-§4 is enacted to read:

4. Civil deputies. Civil deputies must be compensated at a reasonable rate established by the county commissioners pursuant to section 421.

See title page for effective date.

CHAPTER 333

H.P. 1229 - L.D. 1784

**An Act To Update the Laws
Governing the Department of
Environmental Protection's
Rule-making Authority
Concerning Underground Oil
Storage Facilities To Align with
Federal Regulations**

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

Whereas, in October 2015, the United States Environmental Protection Agency completed revisions to the federal regulations concerning technical standards and corrective action requirements for owners and operators of underground oil storage tanks; and

Whereas, states that have been delegated or authorized to administer federal programs must adopt regulations that are no less stringent than applicable federal requirements within 3 years from the date that any revisions to those federal requirements are adopted; and

Whereas, the State has been delegated or authorized to administer the federal regulations governing underground oil storage tanks since July 1992; and

Whereas, the State must adopt several revisions to its statutory provisions and corresponding rules regarding underground oil storage facilities no later than October 2018 in order to maintain its delegated status; 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. 38 MRSA §563-B, first ¶, as enacted by PL 1987, c. 491, §10, is amended to read:

In addition to the rule-making authorities otherwise set forth in this subchapter, the board department may adopt rules related to the following matters:

Sec. 2. 38 MRSA §563-B, sub-§2, as amended by PL 1991, c. 763, §3, is further amended to read:

2. Inventory reconciliation; precision testing; leak detection methods. Procedures and methods to be used in conducting statistical inventory analyses reconciliation, underground oil storage facility precision testing and other leak detection methods. The rules must allow owners or operators of facilities undergoing routine monitoring in the absence of any other evidence of a leak:

A. To check the accuracy of complete statistical inventory data within ~~75~~ 30 days of receipt by the commissioner of the initial statistical analysis reconciliation by rerunning analyses reconciliations before inconclusive reports are considered to be a failure of the tank or piping;

B. To check for failures in any mechanical and electronic monitoring devices within 3 working days of an indication of failure before it is considered a failure of the tank or piping;

C. To engage in procedures under paragraphs A and B before requiring the precision testing of facility components; and

D. To check the accuracy of a failed or inconclusive precision test of facility components before the commissioner may order the excavation of the facility or any portion of the facility. An owner or operator is allowed 2 weeks to schedule a repeat of the precision test;

Sec. 3. 38 MRSA §564, first ¶, as amended by PL 1989, c. 865, §10, is further amended to read:

The board department shall adopt rules necessary to minimize, to the extent practicable, the potential for discharges of oil from underground oil storage facilities and tanks used to store motor fuel or used in the marketing and distribution of oil to others. These rules must ensure that requirements and standards governing facilities under this section assure that the State's program meets requirements under the United States Resource Conservation and Recovery Act of 1976, Subtitle I, as amended. These rules are limited to the following requirements.

Sec. 4. 38 MRSA §564, sub-§1-A, ¶¶A and B, as amended by PL 1991, c. 494, §4, are further amended to read:

A. Monthly statistical inventory reconciliation of daily product inventory data ~~and an annual precision test of all tanks and piping by an independent~~

vendor using procedures approved by the United States Environmental Protection Agency. Pressurized piping must be retrofitted with an automated in-line leak detector; or

B. Installation of one of the following leak detection systems:

(1) Secondary containment of all underground oil storage facility components or secondary containment for the tank and single-walled containment for suction piping sloped evenly to the tank and equipped with a single check valve under the pump;

~~(2) Continuous monitoring for free product in monitoring wells installed in the excavated area around the tank or tanks, and to detect a leak or discharge of oil from the piping not installed in accordance with subparagraph (1), one of the following:~~

- ~~(a) Continuous vapor monitoring;~~
- ~~(b) Annual tightness testing;~~
- ~~(c) Secondary containment with interstitial space monitoring; or~~
- ~~(d) Other methods of leak detection approved by the department;~~

~~(3) Continuous vapor monitoring in the unsaturated zone of all elements of the facility, using sufficient sampling points to detect a leak or discharge of oil from any point in the facility;~~

~~(4) Manual ground water sampling capable of detecting the presence of at least 1/8 inch of free product on top of the ground water table in a reasonable number of ground water monitoring wells installed in the excavated area, and to detect a leak or discharge of oil from the product piping not installed in accordance with subparagraph (1), one of the following:~~

- ~~(a) Continuous vapor monitoring;~~
- ~~(b) Annual tightness testing;~~
- ~~(c) Secondary containment with interstitial space monitoring; or~~
- ~~(d) Other methods of leak detection approved by the department;~~

(5) Automatic tank gauging that can detect a 0.2 gallon per hour loss, and to detect a leak or discharge of oil from product piping not installed in accordance with subparagraph (1), one of the following:

- (a) Continuous vapor monitoring;
- (b) Annual tightness testing;

(c) Secondary containment with interstitial space monitoring; or

(d) Other methods of leak detection approved by the department; or

(6) Other leak detection systems approved by the department that can detect a 0.2 gallon per hour leak rate or a leak of 150 gallons in 30 days with a 95% probability of detecting a leak and a 5% chance of false alarm.

~~Ground water monitoring for the detection of leaks may only be used to meet the requirements of this paragraph where the ground water table is never more than 20 feet from the ground surface and the hydraulic conductivity of the soils between the tank and monitoring wells is not less than 0.01 centimeters per second.~~

Sec. 5. 38 MRSA §564, sub-§2-A, as amended by PL 2011, c. 317, §1, is further amended to read:

2-A. Monitoring, maintenance and operating procedures for existing, new and replacement facilities and tanks. The ~~board's~~ department's rules must require:

A. Collection of inventory data for each day that oil is being added to or withdrawn from the facility or tank, reconciliation of the data, with monthly summaries, and retention of records containing all such data for a period of at least 3 years either at the facility or at the facility owner's place of business;

B. ~~Annual~~ Monthly statistical inventory ~~analysis reconciliation~~, the results of which must be reported to the commissioner. ~~Annual~~ Monthly statistical inventory ~~analysis reconciliation~~ is not required for double-walled tanks equipped with interstitial space monitors;

C. Voltage readings for cathodically protected systems by a cathodic protection tester 6 months after installation and annually thereafter;

D. Monthly inspections by a cathodic protection tester of the rectifier meter on impressed current systems;

E. Precision testing of any tanks and piping showing evidence of a possible leak. Results of all tests conducted must be submitted to the commissioner by the facility owner and the person who conducted the test;

F. Proper calibration, operation and maintenance of leak detection devices;

G. Evidence of financial responsibility for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by

sudden and nonsudden accidental discharges from an underground oil storage facility or tank;

H. Reporting to the commissioner any of the following indications of a possible leak or discharge of oil:

- (1) Unexplained differences in daily inventory reconciliation values that, over a 30-day period, exceed 1.0% of the product throughput;
- (2) Unexplained losses detected through statistical ~~analysis~~ reconciliation of inventory records;
- (3) Detection of product in a monitoring well or by other leak detection methods;
- (4) Failure of a tank or piping precision test, hydrostatic test or other tank or piping tightness test approved by the department; and
- (5) Discovery of oil on or under the premises or abutting properties, including nearby utility conduits, sewer lines, buildings, drinking water supplies and soil.

The rules may not require the reporting of a leak or discharge of oil above ground of 10 gallons or less that occurs on the premises, including, but not limited to, spills, overfills and leaks, when those leaks or discharges do not reach groundwaters or surface waters of the State and are cleaned up within 24 hours of discovery, if a written log is maintained at the facility or the owner's place of business in this State. For each discharge the log must record the date of discovery, its source, the general location of the discharge at the facility, the date and method of cleanup and the signature of the facility owner or operator certifying the accuracy of the log;

I. Compatibility of the materials from which the facility is constructed and the product to be stored;

J. Owners and operators, upon request by the commissioner, to sample their underground oil tanks, to maintain records of all monitoring and sampling results at the facility or the facility owner's place of business and to furnish records of all monitoring and sampling results to the commissioner and to permit the commissioner or the commissioner's representative to inspect and copy those records;

K. Owners and operators to permit the commissioner or the commissioner's designated representatives, including contractors, access to all underground oil storage facilities for all purposes connected with administering this subchapter, including, but not limited to, for sampling the contents

of underground oil tanks and monitoring wells. This right of access is in addition to any other granted by law; and

L. Operators to complete a department training program that meets the minimum requirements specified by the United States Environmental Protection Agency under 42 United States Code, Section 6991i (2007). The training program must provide certification for the successful completion of the program, which must be renewed every 2 years. Training may be provided by a 3rd party if approved by the department.

The requirements in paragraphs A and B do not apply to the following tanks provided as long as the associated piping has secondary containment or a suction pump product delivery system or another leak detection system approved by the commissioner and ~~provided that~~ as long as the tank and associated piping have been installed and are operated in accordance with the requirements of this subchapter, including rules adopted under this subchapter: tanks providing product to a generator; double-walled tanks with continuous interstitial space monitoring; and existing tanks constructed of fiberglass, cathodically protected steel or another commissioner-approved noncorrosive material that are monitored for a leak by a method able to detect a product loss or gain of 0.2 gallons or less per hour.

Sec. 6. 38 MRSA §564, sub-§6, as enacted by PL 2015, c. 361, §1, is amended to read:

6. Retrofit of existing underground tanks. The ~~board's~~ department's rules must allow a person to retrofit a single-walled underground oil storage tank with secondary containment as long as the retrofitted tank complies with Underwriters Laboratories Subject 1316 or 1856 and interstitial monitoring of the retrofitted tank is equal to or greater than interstitial monitoring of a new tank. The ~~board~~ department shall require a site assessment of an underground oil storage facility when a tank is retrofitted in accordance with this subsection.

Sec. 7. 38 MRSA §566-A, sub-§1, as amended by PL 2011, c. 276, §2, is further amended to read:

1. Abandonment. ~~All~~ Except as provided by subsection 1-A, all underground oil storage facilities and tanks that have been, or are intended to be, taken out of service for a period of more than ~~24~~ 12 months must be properly abandoned by the owner or operator of the facility or tank or, if the owner or operator is unknown, dissolved or insolvent, by the current owner of the property where the facility or tank is located. All abandoned facilities and tanks must be removed, except where removal is not physically possible or practicable because the tank or other component of the facility to be removed is:

- A. Located beneath a building or other permanent structure;
- B. Of a size and type of construction that it cannot be removed;
- C. Otherwise inaccessible to heavy equipment necessary for removal; or
- D. Positioned in such a manner that removal will endanger the structural integrity of nearby tanks.

Sec. 8. 38 MRSA §566-A, sub-§1-A, as amended by PL 2011, c. 276, §3, is further amended to read:

1-A. Abandoned tanks brought back into service. Underground oil storage tanks and facilities that have been out of service for a period of more than 24 12 months may not be brought back into service without the written approval of the commissioner. The commissioner may approve the return to service if the owner demonstrates to the commissioner's satisfaction that:

- A. The facility is in compliance with this subchapter and rules adopted pursuant to this subchapter;
- B. The underground oil storage tanks and piping have successfully passed testing as directed by the commissioner;
- C. The underground oil storage tanks and piping are constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the commissioner;
- D. The facility has conforming suction or double-walled pressurized piping; and
- E. The return of the facility to service does not pose an unacceptable risk to groundwater resources. In determining if the facility poses an unacceptable risk to groundwater resources, the commissioner may consider the age and maintenance history of the storage tanks and piping, the number and consequences of past oil discharges from the tanks and piping, the proximity of the facility to drinking water supplies and the proximity of the facility to sensitive geologic areas.

The commissioner may not approve the return to service of a single-walled underground oil storage tank that has been out of service for more than 24 12 consecutive months.

Sec. 9. 38 MRSA §566-A, sub-§3, as amended by PL 1991, c. 88, §1, is further amended to read:

3. Rulemaking. The ~~board~~ department shall adopt rules allowing for the granting of a variance from the requirement of removal where abandonment by removal is not physically possible or practicable due to circumstances other than those listed in this

subsection. The ~~board~~ department shall adopt rules setting forth the proper procedures for abandonment of underground oil storage facilities and tanks, including requirements and procedures to conduct a site assessment for the presence of discharges of oil prior to completion of abandonment at facilities storing motor fuel or used in the marketing and distribution of oil, acceptable methods of disposing of the removed tanks, requirements for venting at least 12 feet above ground level flammable gases purged from tanks and from trucks removing oil from tanks and procedures for abandonment in place where removal of a tank or other component of a facility is determined not physically possible or practicable.

Sec. 10. 38 MRSA §570-F, as repealed and replaced by PL 1991, c. 494, §15 and affected by PL 1997, c. 374, §14, is amended to read:

§570-F. Special provisions

This subchapter may not be construed to authorize the department to require registration of or to regulate the installation or operation of underground tanks used:

- 1. Propane storage.** For the storage of propane; or
- 2. Other structure.** As an oil-water separator, catch basin, flood drain or other emergency containment structure ~~provided that~~ as long as the structure:
 - A. Is used to collect, capture or treat storm water surface runoff or oil spills; ~~and~~
 - B. Is not used for the storage of oil; and
 - C. Is regulated under the federal Clean Water Act, 33 United States Code, Section 1317(b) or Section 1342.

The ~~board~~ department shall adopt rules for underground oil storage facilities for storing waste oil. The ~~board~~ department shall also ~~promulgate~~ adopt rules governing field-constructed, airport hydrant and heavy oil underground oil storage facilities. These rules are not limited by ~~the~~ other provisions of this subchapter ~~H-B~~.

Sec. 11. 38 MRSA §570-N is enacted to read:

§570-N. Rules; wastewater treatment tank systems

The department may adopt rules regulating wastewater treatment tank systems, including oil-water separators and catch basins, that meet the definition of "underground oil storage tank," except that this section does not apply to:

- 1. Oil-water separators.** Oil-water separators and catch basins under section 570-F, subsection 2; and

2. Storm water or wastewater collection. Storm water or wastewater collection systems or flow-through tanks.

The department may adopt rules under this section for wastewater treatment tank systems relating to registration, tank construction, financial assurance and discharge response and corrective action. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

Effective March 7, 2018.

CHAPTER 334

H.P. 1253 - L.D. 1807

An Act To Implement Recommendations Resulting from a State Government Evaluation Act Review of the Board of Environmental Protection by the Joint Standing Committee on Environment and Natural Resources

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

Sec. 1. 38 MRSA §341-C, sub-§3, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

3. Terms; vacancies. The members must be appointed for staggered 4-year terms, ~~except that a vacancy must be filled for the unexpired portion of the term.~~ A member may not serve more than 2 consecutive 4-year terms. A member continues to serve until that member has been reappointed or a successor has been appointed, except that, if the member has not been reappointed or a successor has not been appointed one year after the member's term expires, the member may no longer continue to serve. A vacancy occurring other than by expiration of a term must be filled by appointment for the unexpired portion of the term.

Sec. 2. 38 MRSA §341-C, sub-§5, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is repealed.

Sec. 3. 38 MRSA §341-D, sub-§4, ¶D, as amended by PL 2011, c. 304, Pt. H, §9, is further amended to read:

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by the commissioner under this paragraph, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee ~~erves~~ may serve as a nonvoting member of the board and is entitled to fully participate but is not required to attend meetings and hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department.

See title page for effective date.

CHAPTER 335

H.P. 1197 - L.D. 1717

An Act To Clarify the Authority of the Chief Medical Examiner To Properly Dispose of Abandoned Human Remains

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

Sec. 1. 22 MRSA §3028-A, as enacted by PL 1985, c. 611, §8, is amended to read:

§3028-A. Disposal of unidentified remains and abandoned human remains

Whenever unidentified human ~~skeletal~~ remains are recovered, the Chief Medical Examiner may store the remains, release them to an educational institution, inter them in an appropriate resting place or have them cremated. Ashes of remains cremated may be disposed of in any appropriate manner. Human ~~skeletal~~ remains uncovered in a cared-for cemetery or known to be Indian remains are excluded from the operation of this section.

The Chief Medical Examiner may assume responsibility for the disposal of identified human remains of a deceased resident of this State that are the subject of a medical examiner case if no one takes custody and control of the human remains for a period of 30 days after the Chief Medical Examiner has both completed

an autopsy or necessary examination of the human remains and made reasonable inquiry under section 3028-D, subsection 1. Such abandoned remains may be interred or cremated. The Chief Medical Examiner shall file or cause to be filed a certificate of abandonment in the municipality where the human remains were recovered that indicates the means of disposal.

In the absence of a responsible party, payment of expenses incurred by the Chief Medical Examiner pursuant to this section must be made pursuant to section 3028-D, subsection 2 as if the remains were unidentified. The Chief Medical Examiner may seek to recover costs from the estate or municipality of residence of the deceased.

Sec. 2. 22 MRSA §3035, sub-§1, ¶B, as amended by PL 2017, c. 284, Pt. FFF, §1, is further amended to read:

B. For histological slides, the fees are as follows:

- (1) For each slide, \$12.50;
- (2) A handling fee per case, \$25; and
- (3) For 21 slides or more, an additional handling fee, \$25; ~~and~~

Sec. 3. 22 MRSA §3035, sub-§1, ¶C, as corrected by RR 2015, c. 2, §11, is further amended to read:

C. For other items and services such as photographs and transparencies, additional tests relating to toxicology or specimens and videotaping:

- (1) A handling fee per case, \$20; and
- (2) Anticipated costs of providing the item or service, including shipping charges; ~~and~~

Sec. 4. 22 MRSA §3035, sub-§1, ¶D is enacted to read:

D. For forensic preservation of body fragments and body fluids beyond the period established by the policy of the Office of Chief Medical Examiner, a fee not to exceed \$100 per year, per case.

See title page for effective date.

**CHAPTER 336
S.P. 627 - L.D. 1728**

**An Act To Amend Maine
Criminal Code Sentencing
Provisions Relating To
Increased Sentencing Class
Based on Multiple Prior
Convictions for Certain Violent
or Sexual Crimes**

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

Sec. 1. 17-A MRSA §1252, sub-§4-A, as amended by PL 2015, c. 470, §13, is further amended to read:

4-A. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, ~~12, 13 or 27 or 35, excluding section 853-A~~; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C was committed, or an attempt of any such crime was committed, the defendant had 2 or more prior convictions under chapter 9, 11, ~~12, 13 or 27 or 35, excluding section 853-A~~; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C, or for an attempt of any such crime, or for engaging in substantially similar conduct in another jurisdiction, the sentencing class for the crime is one class higher than it would otherwise be. In the case of a Class A crime, the sentencing class is not increased, but the prior record must be given serious consideration by the court when imposing a sentence. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this subsection, for violations under chapter 11, the dates of prior convictions may have occurred at any time. This subsection does not apply to section 210-A if the prior convictions have already served to enhance the sentencing class under section 210-A, subsection 1, paragraph C or any other offense in which prior convictions have already served to enhance the sentencing class.

See title page for effective date.

**CHAPTER 337
S.P. 637 - L.D. 1738**

**An Act To Permit the Sale and
Consumption of Alcohol in an
Area That Is Not Contiguous to
Licensed Premises**

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

Sec. 1. 28-A MRSA §1051, sub-§3, as amended by PL 2009, c. 438, §2, is further amended to read:

3. Liquor not to be consumed elsewhere. Except as provided in paragraphs A and B and in section 1207, ~~no~~ a licensee for the sale of liquor to be consumed on the premises where sold may not personally or by an agent or employee, sell, give, furnish or deliver any liquor to be consumed elsewhere than upon the licensed premises or noncontiguous real estate that meets the conditions specified in subsection 9. The service and consumption of liquor must be limited to areas that are clearly defined and approved in the application process by the bureau as appropriate for the consumption of liquor. Outside areas must be controlled by barriers and by signs prohibiting consumption beyond the barriers.

A. Subject to law and the rules of the bureau, hotel or bed and breakfast licensees may sell liquor in the original packages or by the drink to bona fide registered room guests. Any sale to a guest may be delivered to the guest's room only by a hotel or bed and breakfast employee.

B. A licensee may serve liquor at locations other than the licensed premises under the off-premise catering license issued under section 1052.

Sec. 2. 28-A MRSA §1051, sub-§9 is enacted to read:

9. Use of noncontiguous real estate. Notwithstanding section 2, subsection 24, the bureau may approve the use of noncontiguous real estate near an establishment licensed under this chapter as part of the premises where the licensee may exercise the license privilege.

A. The bureau shall ensure the following conditions have been met before approving the use of noncontiguous real estate as part of the licensed premises:

(1) The noncontiguous real estate is owned by the municipality in which the establishment is licensed;

(2) The licensee has obtained approval from the municipality to directly or indirectly control the noncontiguous real estate for the exercise of the license privilege; and

(3) The bureau has determined that the noncontiguous real estate is a proper place for the exercise of the license privilege.

B. A licensed establishment authorized to use noncontiguous real estate as part of the licensed premises may not:

(1) Permit any person other than an employee of the licensed establishment to trans-

port liquor between the establishment and the noncontiguous real estate; or

(2) Notwithstanding section 4, subsection 2, sell or serve liquor on the noncontiguous real estate later than one hour after the time food service has ended or 11 p.m., whichever occurs first.

C. The area between the licensed establishment and the noncontiguous real estate may be accessible to the public if it is a public way as defined by Title 29-A, section 101.

D. The bureau shall adopt rules to implement the provisions of this subsection. Rules adopted pursuant to this paragraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 338

H.P. 1196 - L.D. 1716

An Act To Protect Persons Who Provide Assistance to Law Enforcement Dogs, Search and Rescue Dogs and Service Dogs

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

Sec. 1. 14 MRSA §164-B is enacted to read:

§164-B. Immunity from civil liability for assistance given to law enforcement dogs, search and rescue dogs and service dogs

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

A. "Emergency medical services person" has the same meaning as "emergency medical services' person" in Title 32, section 83, subsection 12.

B. "Law enforcement dog" means a dog trained for law enforcement use that is actively certified pursuant to federal, national, regional or state standards and that is owned or maintained by a law enforcement agency or other governmentally funded agency for law enforcement or security services.

C. "Law enforcement officer" means a person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders and to make arrests for crimes.

D. "Search and rescue dog" means a dog that is certified as a search and rescue dog by the De-

partment of Inland Fisheries and Wildlife, Bureau of Warden Service or that is in training to become a search and rescue dog with an organization recognized by the Bureau of Warden Service to provide such training.

E. "Security services dog handler" means a security professional who is trained to partner with a law enforcement dog in the performance of the security professional's duties, who is actively certified pursuant to federal, national, regional or state standards and who is qualified to train, care for and work with a law enforcement dog.

F. "Service dog" has the same meaning as "service animal" in Title 5, section 4553, subsection 9-E.

2. Immunity. Notwithstanding any provision of any public or private and special law to the contrary, an emergency medical services person, a security services dog handler or a law enforcement officer who voluntarily, without the expectation of monetary or other compensation, renders first aid, emergency treatment or rescue assistance to a law enforcement dog, search and rescue dog or service dog that is unconscious, ill, injured or in need of rescue assistance is not liable for damages for an injury alleged to have been sustained by the dog nor for damages for the death of the dog alleged to have occurred by reason of an act or omission in the rendering of the first aid, emergency treatment or rescue assistance unless it is established that the injury or the death was caused willfully, wantonly or recklessly or by gross negligence on the part of the emergency medical services person, security services dog handler or law enforcement officer.

3. Application. This section applies to a member or employee of a nonprofit volunteer or governmental ambulance, rescue or emergency unit, whether or not a user or service fee may be charged by the nonprofit unit or the governmental entity and whether or not the member or employee receives a salary or other compensation from the nonprofit unit or the governmental entity.

This section applies to a law enforcement officer, security services dog handler or emergency medical services person who voluntarily renders first aid, emergency treatment or rescue assistance to a law enforcement dog, search and rescue dog or service dog, to the extent the officer, handler or person has received training in the medical stabilization of dogs.

This section does not apply if the first aid, emergency treatment or rescue assistance is rendered on the premises of a veterinary hospital or clinic.

See title page for effective date.

CHAPTER 339 H.P. 1240 - L.D. 1796

An Act To Improve the Effectiveness of the New Markets Capital Investment Credit

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

Sec. 1. 36 MRSA §5219-HH, sub-§1, ¶J, as amended by PL 2013, c. 75, §1, is further amended to read:

J. "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business made after September 28, 2011. Except as otherwise provided in this paragraph, with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made with the proceeds of qualified equity investments that have been certified under Title 10, section 1100-Z, subsection 3, paragraph G is \$10,000,000 per project constructed, maintained or operated by the qualified active low-income community business whether made by one or several qualified community development entities. With respect to investments in a qualified active low-income community business that is a manufacturing or value-added production enterprise, the limit on the qualified low-income community investment is \$40,000,000 per project constructed, maintained or operated by the qualified active low-income community business. For the purposes of this paragraph, with respect to projects to which the \$10,000,000 limitation applies, "project" includes all land, buildings, structures, machinery and equipment located at the same location and constructed, maintained or operated by the qualified active low-income community business. For the purposes of this paragraph, with respect to projects to which the \$40,000,000 limitation applies, "project" means, and refers separately to, each manufacturing or value-added production facility that projects to create or retain more than 200 jobs, including the land, buildings, structures, machinery and equipment functionally related to, and integrated with, the manufacturing or production process conducted on the site of that facility. "Project" does not mean or include the component pieces of an integrated manufacturing or production process conducted on the site of a particular facility. "Qualified low-income community investment" does not include a capital or equity investment made after November 9, 2015 if more than 5% of the investment is used to refinance costs, expenses

or investments incurred or paid by the qualified active low-income community business or a party related to the qualified active low-income community business prior to the date of the qualified low-income community investment; make equity distributions from the qualified active low-income community business to its owners; acquire an existing business or enterprise in the State; or pay transaction fees.

See title page for effective date.

CHAPTER 340
S.P. 337 - L.D. 1030

An Act To Require Health Insurance Coverage for Covered Services Provided by Naturopathic Doctors

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

Sec. 1. 24-A MRSA §4320-K is enacted to read:

§4320-K. Coverage for services provided by a naturopathic doctor

1. Services provided by a naturopathic doctor. A carrier offering a health plan in this State shall provide coverage for health care services performed by a naturopathic doctor licensed under Title 32, chapter 113-B, subchapter 3 when those services are covered services under the health plan when performed by any other health care provider and when those services are within the lawful scope of practice of the naturopathic doctor.

2. Limits; deductible; copayment; coinsurance. A carrier may offer a health plan containing a provision for a deductible, copayment or coinsurance requirement for a health care service provided by a naturopathic doctor as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to the same service provided by other health care providers.

3. Network participation. A carrier shall demonstrate that the carrier's provider network includes reasonable access, in accordance with section 4303, to all covered services that are within the lawful scope of practice of a naturopathic doctor. A carrier may not exclude a provider from participation in the carrier's provider network solely because the provider is a naturopathic doctor as long as the provider is willing to meet the same terms and conditions as other participating providers. This subsection does not require a carrier to contract with all naturopathic doctors or require a carrier to provide coverage under a health plan for any service provided by a participating naturopathic

doctor that is not within the health plan's scope of coverage.

4. Application. The requirements of this section apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State. For purposes of this section, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

Sec. 2. Application. The requirements of this Act apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 2019. For purposes of this Act, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

See title page for effective date.

CHAPTER 341
H.P. 1205 - L.D. 1725

An Act To Ensure Stability for Certain Holders of Liquor Licenses

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

Sec. 1. 28-A MRSA §1355-A, sub-§2-B is enacted to read:

2-B. Grandfathering of certain licenses issued prior to January 1, 2018. The bureau may not suspend, revoke or refuse to renew a license issued under this section or chapter 43 or 45 that was initially issued prior to January 1, 2018 solely on the basis that:

A. The establishment licensed under chapter 43 or 45 was determined by the bureau after the license was issued to not be exclusively held or exclusively owned by a person licensed to manufacture liquor under this section; or

B. The licensee is in violation of section 707, subsection 2, 3 or 4, if the violation existed in the same manner at the time the license was initially issued or at the time the license was renewed.

The prohibition described in this subsection does not apply if the reason for suspension, revocation or refusal to renew is due to the licensee's substantial misrepresentation of or failure to disclose material facts required for the issuance or renewal of the license.

See title page for effective date.

**CHAPTER 342
S.P. 630 - L.D. 1731**

**An Act To Recognize the
Accreditation of Certain
Private Schools**

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

Sec. 1. 20-A MRSA §2901, sub-§2, ¶A, as amended by PL 2015, c. 40, §2, is further amended to read:

~~A. A private school approved for tuition purposes that enrolls at least 60% publicly funded students that is currently~~ Currently accredited by a commission on independent schools of a New England association of schools and colleges in fulfillment of its standards of accreditation and indicators and that also meets the applicable requirements of the system of learning results established in section 6209; or

Sec. 2. 20-A MRSA §2951, sub-§6, as amended by PL 1997, c. 266, §8, is repealed and the following enacted in its place:

6. Student assessment. Meets the following requirements:

A. It participates in the statewide assessment program to measure and evaluate the academic achievements of students; and

B. It meets the applicable requirements of the system of learning results established in section 6209.

The requirements of this subsection apply only to a school that enrolls 60% or more publicly funded students, as determined by the previous year's October and April average enrollment; and

Sec. 3. 20-A MRSA §2951, sub-§7, as enacted by PL 1997, c. 266, §9, is amended to read:

7. Release of student records. Upon the request of a school unit, ~~release~~ releases copies of all student records for students transferring from the private school to the school unit.

See title page for effective date.

**CHAPTER 343
H.P. 1015 - L.D. 1476**

**An Act To Ensure Continued
Coverage for Essential Health
Care**

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

Sec. 1. 24-A MRSA §4320-A, as enacted by PL 2011, c. 364, §34, is amended to read:

§4320-A. Coverage of preventive health services

Notwithstanding any other requirements of this Title, a carrier offering a health plan ~~subject to the federal Affordable Care Act in this State~~ shall, at a minimum, provide coverage for and may not impose cost-sharing requirements for preventive services as required by ~~the federal Affordable Care Act~~ this section.

1. Preventive services. A health plan must, at a minimum, provide coverage for:

A. The evidence-based items or services that have a rating of A or B in the recommendations of the United States Preventive Services Task Force or equivalent rating from a successor organization;

B. With respect to the individual insured, immunizations that have a recommendation from the federal Department of Health and Human Services, Centers for Disease Control and Prevention, Advisory Committee on Immunization Practices and that are consistent with the recommendations of the American Academy of Pediatrics, the American Academy of Family Physicians or the American College of Obstetricians and Gynecologists or a successor organization;

C. With respect to infants, children and adolescents, evidence-informed preventive care and screenings provided for in the most recent version of the comprehensive guidelines supported by the federal Department of Health and Human Services, Health Resources and Services Administration that are consistent with the recommendations of the American Academy of Pediatrics or a successor organization; and

D. With respect to women, such additional preventive care and screenings not described in paragraph A, provided for in the comprehensive guidelines supported by the federal Department of Health and Human Services, Health Resources and Services Administration women's preventive services guidelines that are consistent with the recommendations of the American College of Obstetricians and Gynecologists women's preventive services initiative.

2. Change in recommendations. If a recommendation described in subsection 1 is changed during a health plan year, a carrier is not required to make changes to that health plan during the plan year.

Sec. 2. Application. The requirements of this Act apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 2019. For purposes of this Act, all contracts are deemed to be

renewed no later than the next yearly anniversary of the contract date.

See title page for effective date.

CHAPTER 344

H.P. 1011 - L.D. 1472

**An Act To Lower the Costs of
Broadband Service by
Coordinating the Installation
of Broadband Infrastructure**

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

Sec. 1. 35-A MRSA §2503, sub-§2, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

2. Notice. The applicant may give public notice of the application by publishing its description of the proposed facility once in a newspaper circulated in the municipality or municipalities encompassing the limits of the proposed location. The applicant shall send a copy of any application filed with the Department of Transportation to the municipal clerk of each municipality in which the facilities are located, or to the clerk of the county commissioners in the case of facilities within an unorganized township, except that the applicant may, without publication of its application, place its facility described in its application on receipt of a permit from the licensing authority as may be otherwise provided. If a proposed facility is located underground and is in excess of 500 feet in length, the applicant shall, within 5 business days of submitting an application to the applicable licensing authority, provide the ConnectME Authority established in Title 5, section 12004-G, subsection 33-F a notice that includes a description and the location of the proposed facility.

Sec. 2. 35-A MRSA §9204-A, sub-§6-A is enacted to read:

6-A. Notice of construction. The authority shall disseminate information about a proposed underground facility that it receives in accordance with section 2503, subsection 2 in a manner that is accessible to all parties that may be interested in installing a broadband conduit in the area of the proposed underground facility.

See title page for effective date.

CHAPTER 345

H.P. 1092 - L.D. 1588

**An Act To Maintain Access to
Property on Discontinued
Roads**

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

Sec. 1. 23 MRSA §3026-A, sub-§1, as enacted by PL 2015, c. 464, §5, is amended to read:

1. Notification of discontinuance to abutting property owners. The municipal officers shall give best practicable notice to all abutting property owners of a proposed discontinuance of a town way or public easement. ~~As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality.~~

A. For a proposed discontinuance of a town way, the notice must include information regarding the potential discontinuance or retention of a public easement, including maintenance obligations for and the right of access to the way under the discontinuance or retention of a public easement, and information regarding the rights of abutting property owners to enter into agreements regarding maintenance of and access to the discontinued way.

B. For a proposed discontinuance of a town way that is abutted by property not otherwise accessible by a public way, the notice must include information, in addition to the information required in paragraph A, regarding the right of abutting property owners to create private easements and the municipal requirements under subsection 1-A.

Paragraphs A and B apply to town ways that are not discontinued as of October 1, 2018.

As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality.

Sec. 2. 23 MRSA §3026-A, sub-§1-A is enacted to read:

1-A. Discontinuance after October 1, 2018 of a town way with abutting property not otherwise accessible. A municipality may not discontinue a town way that is not discontinued as of October 1, 2018 pursuant to this section if that town way is abutted by property not otherwise accessible by a public way, unless the municipal officers have complied with this subsection.

A. The municipal officers shall wait one year from the date of notice provided pursuant to subsection 1, paragraph B before proceeding with the discontinuance process, to allow abutting property owners the opportunity to grant private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests.

B. After the one-year waiting period required in paragraph A, the municipal officers may:

(1) Proceed with the discontinuance process pursuant to this section, as long as a public easement is retained; or

(2) If the municipal officers verify that private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests have been filed with the registry of deeds, proceed with the discontinuance process without retaining a public easement.

Sec. 3. 23 MRSA §3026-A, sub-§4, as enacted by PL 2015, c. 464, §5, is amended to read:

4. Approval of order of discontinuance and damage awards. ~~Ten or more business days after the public hearing pursuant to subsection 3, the~~ The municipal legislative body must vote upon the order of discontinuance submitted to it:

A. To approve the order of discontinuance and the damage awards and to appropriate the money to pay the damages; or

B. To disapprove the order of discontinuance.

The vote required by this subsection must be conducted 10 or more business days after the public hearing pursuant to subsection 3, except that, for a town way that is not discontinued as of October 1, 2018, in a municipality in which the municipal legislative body is the town meeting, the vote must be conducted at the next regularly scheduled annual town meeting.

Sec. 4. 33 MRSA c. 7, sub-c. 1-B is enacted to read:

SUBCHAPTER 1-B

NONRESIDENTIAL PROPERTY DISCLOSURES

§191. Definitions

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

1. Nonresidential real property. "Nonresidential real property" means real estate that is not residen-

tial real property as defined in section 171, subsection 6.

2. Public easement. "Public easement" has the same meaning as in Title 23, section 3021, subsection 2.

3. Town way. "Town way" has the same meaning as in Title 23, section 3021, subsection 3.

§192. Applicability; exemptions

This subchapter applies to the transfer of any interest in nonresidential real property, whether by sale, installment land contract, lease with an option to purchase or any other option to purchase. If a person licensed to practice real estate brokerage is involved in the transaction, the licensee is subject to the requirements of licensure in Title 32, chapter 114. The following transfers are exempt from this subchapter:

1. Court order. Transfers pursuant to court order, including, but not limited to, transfers ordered by a court in the administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain and transfers resulting from a decree for specific performance;

2. Default. Transfers to a mortgagee by a mortgagor or successor in interest who is in default or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default;

3. Co-owner. Transfers from one or more co-owners solely to one or more other co-owners;

4. Testate; intestate succession. Transfers pursuant to testate or intestate succession;

5. Divorce. Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment;

6. Living trust. Transfers to a living trust; and

7. Corrective deed. Transfers that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify or supplement a deed previously recorded.

§193. Disclosures

Unless the transaction is exempt under section 192, the seller of nonresidential real property shall provide to the purchaser a property disclosure statement containing the following:

1. Roads on or abutting property. Information identifying any abandoned or discontinued town ways, any public easements and any private roads located on or abutting the property, if known by the seller; and

2. Road maintenance. Information identifying the party or parties responsible for maintenance of any abandoned or discontinued town way, public easement

or private road on or abutting the property identified pursuant to subsection 1, including any responsible road association, if known by the seller.

See title page for effective date.

**CHAPTER 346
S.P. 609 - L.D. 1652**

**An Act To Authorize the
Commissioner of Marine
Resources To Limit the
Number of Shrimp Licenses
That May Be Used in Certain
Seasons**

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

Sec. 1. 12 MRSA §6804, sub-§2, as amended by PL 2003, c. 248, §10, is further amended to read:

2. Licensed activities. The Except as limited pursuant to subsection 2-A, the holder of a commercial northern shrimp license may fish for or take shrimp or possess, ship, transport or sell northern shrimp that the license holder has taken. A license issued under subsection 7, paragraph B or C also authorizes unlicensed crew members aboard the vessel declared by the license holder to engage in these activities.

Sec. 2. 12 MRSA §6804, sub-§2-A is enacted to read:

2-A. Licenses limited. The commissioner may establish by rule a system to limit the number of commercial northern shrimp licenses issued under this section when the total allowable catch for northern shrimp established for Maine by the Atlantic States Marine Fisheries Commission is less than 2,000 metric tons. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Prior to initiating rulemaking, the commissioner shall consult with members of the northern shrimp industry, including individuals who are eligible to obtain a license that allows fishing for or taking northern shrimp and holders of a license or permit issued under chapter 625 that allows wholesale or retail activity involving northern shrimp.

The commissioner shall provide a report regarding management of the northern shrimp resource and the northern shrimp fishing industry to the joint standing committee of the Legislature having jurisdiction over marine resources matters by January 15th of the year following a year in which the commissioner limited the number of licenses issued under this section. The joint standing committee may report out legislation to the session of the Legislature in which the report was

received regarding management of the northern shrimp resource or the northern shrimp fishing industry.

See title page for effective date.

**CHAPTER 347
H.P. 1231 - L.D. 1786**

**An Act Regarding Maine's
Liquor Laws**

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

Sec. 1. 28-A MRSA §9, as amended by PL 1997, c. 373, §24, is repealed.

Sec. 2. 28-A MRSA §708-C, sub-§1, as enacted by PL 2015, c. 214, §3, is amended to read:

1. Donations for an auction or award. A person licensed by the bureau under section 1355-A, a certificate of approval holder, a manufacturer or supplier of distilled spirits or a wholesaler may donate a certificate to purchase its product or donate its product to a public broadcasting station, an incorporated civic organization or a similarly purposed national organization designated by the United States Internal Revenue Service under the United States Internal Revenue Code of 1986, Section 501(c)(3) for the purpose of an auction or to offer as a prize, gift or award in conjunction with efforts to support the purposes of the incorporated civic organization, similarly purposed organization or public broadcasting station. Spirits donated in accordance with this subsection must ~~have first been sold to the State or the State's contracted wholesaler for listing, pricing and distribution in accordance with this Title~~ be listed by the commission for sale in this State, clearly labeled as a donation and purchased from the State's wholesale liquor provider at list price. A person authorized to make a donation in accordance with this subsection shall maintain a record of each donation, including the value of the donation and the date on which it was made. A recipient of a donation under this subsection must be 21 years of age or older.

Sec. 3. 28-A MRSA §1355-A, sub-§2, ¶D, as amended by PL 2017, c. 34, §1, is further amended to read:

D. A licensee under this section may sell from the licensed premises where liquor is produced by the licensee liquor produced by the licensee for consumption off the licensed premises.

(1) Sales made in accordance with this paragraph do not require a licensee under this section to obtain an additional retail license under chapter 45.

(2) Liquor sold in accordance with this paragraph may not be consumed anywhere on the licensed premises.

(3) The area of the licensed premises where a licensee opts to transact sales for off-premises consumption is not required to be separate from and may be accessed ~~from~~ by the same entrance ~~used to access an~~ for the area licensed for on-premises consumption of liquor under chapter 43 in accordance with paragraph I.

Sec. 4. 28-A MRSA §1355-A, sub-§2, ¶I, as amended by PL 2017, c. 280, §1, is further amended to read:

I. A licensee may be issued one retail license under chapter 43 per licensed location, on the premises of the licensed location or at another location, for the sale of liquor to be consumed on the premises at the retail premises if the same person or persons hold a controlling interest in both the licensed manufacturing location and the licensed retail establishment.

(2) The retail license authorizes the sale of products of the brewery, small brewery, winery, small winery, distillery or small distillery, in addition to other liquor permitted to be sold under the retail license, to be consumed on the premises.

(2-A) Liquor sold under a chapter 43 retail license operated on the premises of a location licensed under this section may not be consumed on any part of the premises where patrons are not generally permitted.

(3) All records related to activities under a manufacturer license issued under this section must be kept separate from records related to the retail license.

(4) A distillery or small distillery must meet the requirements of subsection 5, paragraphs D and E.

(5) The licensee shall ensure that products purchased for off-premises consumption under paragraph D are not consumed on the licensed premises.

Sec. 5. 28-A MRSA §1355-A, sub-§2-A, as enacted by PL 2017, c. 280, §2, is repealed.

See title page for effective date.

CHAPTER 348
S.P. 650 - L.D. 1751

An Act Regarding the Victims' Compensation Fund

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

Sec. 1. 5 MRSA §3360-C, sub-§2, ¶B, as enacted by PL 1991, c. 806, §3, is amended to read:

B. To or on behalf of any person who violated a criminal law that caused or contributed to the injury or death for which compensation is sought, except when the person was the victim of a criminal homicide and the claimant was not involved in the criminal conduct.

See title page for effective date.

CHAPTER 349
H.P. 1269 - L.D. 1827

An Act To Amend the Maine Uniform Trust Code Regarding Reporting by Trustees and the Duties of Trustees to Settlers

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

Sec. 1. 18-B MRSA §105, sub-§3, as amended by PL 2011, c. 42, §4, is further amended to read:

3. Waiver or modification. The settlor, in the trust instrument or in another writing delivered to the trustee, may waive or modify one or more of the duties of a trustee under section 813, ~~subsection~~ subsections 1 ~~or~~ 2 and 3 to give notice, information and reports to qualified beneficiaries in either or both of the following ways:

A. Waiving or modifying such duties as to all qualified beneficiaries except the settlor's surviving spouse during the lifetime of the settlor or the lifetime of the settlor's surviving spouse; and

B. With respect to one or more of the current beneficiaries as to whom the settlor has waived or modified such duties, designating a person or persons, any of whom may or may not be a beneficiary, to act in good faith to protect the interests of the current beneficiaries who are not receiving notice, information or reports and to receive any notice, information or reports required under section 813, subsection 1 ~~or~~ 2 or 3 in lieu of providing such notice, information or reports to the current beneficiaries. The person or persons designated

under this paragraph are deemed to be representatives of the current beneficiaries not receiving notice, information or reports for the purposes of the time limitation for a beneficiary to commence an action against the trustee for breach of trust as provided in section 1005, subsection 1.

Sec. 2. 18-B MRSA §813, sub-§6, as enacted by PL 2011, c. 42, §7, is amended to read:

6. Duty to settlor of revocable trust. During the lifetime of the settlor of a revocable trust, whether or not the settlor has capacity to revoke the trust, the trustee's duties under this section are owed exclusively to the settlor and the trustee has no duty to provide information or reports to distributees, permissible distributees or qualified beneficiaries. If the settlor lacks capacity to revoke the trust, a trustee may satisfy the trustee's duties under this section by providing information and reports to any one or more of the following in the order of preference listed:

- A. The person or persons designated by the settlor in the trust to receive information and reports on the settlor's behalf;
- B. The settlor's spouse or registered domestic partner under Title 22, section 2710;
- C. The settlor's agent under a durable power of attorney;
- D. The settlor's court-appointed conservator; or
- E. The settlor's court-appointed guardian.

If the settlor lacks capacity to revoke the trust and there are no persons listed in this subsection to whom the trustee may provide information and reports, the trustee shall satisfy its duties under this section by providing information and reports to the qualified beneficiaries.

See title page for effective date.

CHAPTER 350

H.P. 1043 - L.D. 1519

An Act To Define the Intertidal Zone for the Management and Enforcement of Shellfish Conservation Ordinances

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

Sec. 1. 12 MRSA §6671, sub-§3, ¶A, as amended by PL 2007, c. 494, §1, is further amended to read:

- A. Within any area of the intertidal zone within the municipality, a shellfish conservation ordinance may:

- (1) Regulate or prohibit the possession of shellfish;
- (2) Fix the amount of shellfish that may be taken;
- (3) Provide for protection from shellfish predators;
- (4) Authorize the municipal officials to open and close flats under specified conditions; and
- (5) Specify areas of the intertidal zone in which the dragging of mussels may be limited to the degree necessary to support a municipal shellfish conservation program.

Sec. 2. 12 MRSA §6671, as amended by PL 2013, c. 301, §14; c. 468, §31; and c. 517, §1, is further amended by adding at the end a new paragraph to read:

For the purposes of this section, "intertidal zone" means the shores, flats or other land below the high-water mark and above subtidal lands.

See title page for effective date.

CHAPTER 351

H.P. 1268 - L.D. 1826

An Act To Repeal the Sunset Date on the Laws Governing Licensure of Appraisal Management Companies

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

Whereas, the laws governing the licensure of appraisal management companies are scheduled to be repealed March 15, 2018, before the 90-day period expires; 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. 32 MRSA §14049-K, as enacted by PL 2017, c. 270, §1, is repealed.

Emergency clause. In view of the emergency

cited in the preamble, this legislation takes effect when approved.

Effective April 1, 2018.

CHAPTER 352

H.P. 1200 - L.D. 1720

**An Act To Increase Flexibility
in the Temporary Medical
Allowance for Lobster and
Crab Fishing License Holders**

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

Sec. 1. 12 MRSA §6450, sub-§1, as enacted by PL 2013, c. 239, §9, is amended to read:

1. Temporary medical allowance. Notwithstanding section 6421, upon request the commissioner may issue a temporary medical allowance that permits an individual to fish under the authority of the license of a Class I, Class II or Class III lobster and crab fishing license holder but not under the license holder's direct supervision if the following criteria are met:

- A. The individual who will be fishing has successfully completed an apprentice program under section 6422;
- B. The individual who will be fishing is the child or spouse of the individual who holds the Class I, Class II or Class III lobster and crab fishing license;
- C. The holder of the Class I, Class II or Class III lobster and crab fishing license is unable to use that license due to a substantial illness or medical condition. The holder of the Class I, Class II or Class III lobster and crab fishing license shall provide the commissioner with documentation from a physician describing the illness or other medical condition; and
- D. The holder of the Class I, Class II or Class III lobster and crab fishing license documents to the commissioner that the license holder harvested a minimum of 1,000 pounds of lobsters within one year prior to the request for the temporary medical allowance.

~~A temporary medical allowance may not exceed one year.~~ A request for a temporary medical allowance must be in writing and must specify the dates for which the temporary medical allowance is requested. The holder of the Class I, Class II or Class III lobster and crab fishing license on which the temporary medical allowance is based must maintain a valid license during the duration of the temporary medical allowance. The holder of the Class I, Class II or Class III lobster and crab fishing license is liable for the activi-

ties of the individual fishing under the temporary medical allowance.

Sec. 2. 12 MRSA §6450, sub-§§2 and 3 are enacted to read:

2. Term. A temporary medical allowance may not exceed one year or, upon renewal under subsection 3, a total of 2 consecutive years.

3. Renewal. The commissioner may renew a temporary medical allowance issued under subsection 1 for a maximum of one year upon a request in writing from the holder of the Class I, Class II or Class III lobster and crab fishing license upon which the temporary medical allowance is based. A request under this subsection must be received by the commissioner before the expiration of a current temporary medical allowance issued to that license holder.

See title page for effective date.

CHAPTER 353

H.P. 290 - L.D. 399

**An Act Regarding Municipal
Satellite Wastewater Collection
Systems**

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

Sec. 1. 38 MRSA §361-A, sub-§3-D is enacted to read:

3-D. Publicly owned treatment works. "Publicly owned treatment works" means a device or system for the treatment of pollutants that is owned by the State or a political subdivision thereof, a municipality, a district, a quasi-municipal corporation or another public entity. "Publicly owned treatment works" includes sewers, pipes or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

Sec. 2. 38 MRSA §414-B, sub-§1, as amended by PL 2001, c. 232, §12, is repealed.

Sec. 3. 38 MRSA §414-D is enacted to read:

§414-D. Municipal satellite collection systems

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

A. "Municipal satellite collection system" or "system" means a wastewater collection system, owned or operated by a municipality or a quasi-municipal entity, that directly or indirectly conveys wastewater to a publicly owned treatment works that is owned or operated by a separate le-

gal entity. "Municipal satellite collection system" includes a gravity sewer and a force main.

B. "Unauthorized discharge" means a discharge of wastewater from a municipal satellite collection system to any location other than the publicly owned treatment works identified by the owner of the system pursuant to subsection 2.

2. Registration. The owner of a municipal satellite collection system shall register the system with the department in accordance with this subsection on a form prepared and furnished by the department. The registration process required under this subsection must, at a minimum, require the owner of a municipal satellite collection system to provide the department with the following information:

A. Contact information for the owner and the operator of the system;

B. Information on the publicly owned treatment works that the system discharges to;

C. Information on the geographic areas served by the system;

D. A basic map or schematic diagram of the system; and

E. System specifications, including, but not limited to, the number of miles of pipe within the system, the number and location of pump stations within the system and the number of customers served by the system.

3. Report of unauthorized discharge. The owner or operator of a municipal satellite collection system shall report to the department any unauthorized discharge in accordance with this subsection.

A. An initial report of the unauthorized discharge must be provided orally to the department by the owner or operator of the system within 24 hours of the time the owner or operator becomes aware of the discharge.

B. A written report of the unauthorized discharge must be provided to the department by the owner or operator of the system within 5 days of the time the owner or operator becomes aware of the discharge. The written report must be submitted on a form prepared and furnished by the department and must contain information on the unauthorized discharge including, but not limited to, the cause of the discharge, the date and time of the discharge, the location of the discharge, information on any water bodies that may be impacted by the discharge, the number of gallons of wastewater discharged and, if the discharge has not been corrected at the time of the written report, the anticipated amount of time that the discharge is expected to continue and the steps that the owner or operator plans to implement to reduce and elimi-

nate the discharge and prevent a recurrence of the discharge.

See title page for effective date.

CHAPTER 354

H.P. 1258 - L.D. 1813

An Act To Protect Children under 14 Years of Age from Being Photographed by Certain Persons

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

Sec. 1. 17-A MRSA §261, sub-§5 is enacted to read:

5. For purposes of this section, "indirect contact" includes, but is not limited to, a person photographing another person who has not in fact attained 14 years of age after the person's having been notified, in writing or otherwise, by a law enforcement officer, corrections officer or judicial officer not to engage in that conduct. The notification not to engage in that conduct expires one year after the date the notification is given. For purposes of this subsection, "photographing" means making, capturing, generating or saving a print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material.

See title page for effective date.

CHAPTER 355

S.P. 684 - L.D. 1816

An Act Regarding the Penalties for Hunting Deer over Bait

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

Sec. 1. 12 MRSA §10902, sub-§7-C, ¶B, as enacted by PL 2017, c. 202, §1, is amended to read:

B. For a 2nd offense, ~~the person is permanently ineligible to obtain a hunting license~~ for a period of 2 years from the date of conviction.

See title page for effective date.

**CHAPTER 356
H.P. 1265 - L.D. 1823**

**An Act Regarding the Repeal
of a Provision of Law Allowing
Certain Nonresidents To Hunt
Deer before the Open Season
on Deer**

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

Sec. 1. 12 MRSA §11401, sub-§1, ¶E, as en-
acted by PL 2015, c. 401, §1, is amended to read:

E. Notwithstanding paragraph B, subparagraph 3
(3), a nonresident who owns 25 or more acres of
land in the State and leaves that property open to
hunting, holds a valid hunting license and is not
otherwise prohibited by law may hunt deer on the
Saturday preceding the first day of open season on
deer.

~~This paragraph is repealed on September 15,
2018.~~

See title page for effective date.

**CHAPTER 357
S.P. 669 - L.D. 1790**

**An Act Regarding Youth
Hunting Day for Hunting Bear
and Carrying a Handgun
during the Regular
Archery-only Season on Deer**

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

Sec. 1. 12 MRSA §11251, as amended by PL
2017, c. 164, §12, is further amended to read:

§11251. Open and closed seasons

**1. Open season on bear; commissioner's au-
thority.** This subsection governs the open and closed
seasons on bear.

A. There is an open season on hunting bear from
the first Monday preceding September 1st to No-
vember 30th annually. The commissioner may,
pursuant to section 10104, subsection 1, adopt
rules prohibiting the use of bait to hunt black bear
during any portion of the open bear hunting sea-
son. ~~Rules adopted pursuant to this paragraph are
routine technical rules as defined in Title 5, chap-
ter 375, subchapter 2-A.~~

B. There is an open season on using a dog or
dogs in conjunction with bear hunting from the
first Monday preceding September 1st to the day

preceding the open firearm season on deer pro-
vided in sections 11401 and 11402.

3. Youth bear hunting day. The commissioner
may establish by rule a youth hunting day for hunting
bear.

Rules adopted pursuant to this section are routine
technical rules as defined in Title 5, chapter 375, sub-
chapter 2-A.

Sec. 2. 12 MRSA §11403, sub-§2, ¶B, as
amended by PL 2011, c. 298, §1, 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 from carrying~~ a concealed handgun pursuant
to ~~weapon in accordance with Title 25, section
2003 from carrying a handgun 2001-A.~~

See title page for effective date.

**CHAPTER 358
S.P. 267 - L.D. 822**

**An Act To Ensure Fairness
among Large Consumers of
Natural Gas**

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

Sec. 1. 35-A MRSA §10111, sub-§2, as
amended by PL 2017, c. 282, §3, is further amended to
read:

2. Funding level. The natural gas conservation
fund, which is a nonlapsing fund, is established to
carry out the purposes of this section. The commis-
sion shall assess each gas utility, in accordance with
the triennial plan, an amount necessary to capture all
cost-effective energy efficiency that is achievable and
reliable for those consumers who are eligible to re-
ceive funds from the natural gas conservation fund.
The commission shall direct a gas utility that collects
any portion of the assessment under this subsection
from a customer that is a large-volume manufacturer
and large-volume agricultural business to collect the
assessment only on the first 1,000,000 centum cubic
feet of natural gas used by that manufacturer or agri-
cultural business in each year. The limitation on the
collection of the assessment from large-volume manu-
facturers and large-volume agricultural businesses
may not affect the trust's determination of the amount
necessary to capture all cost-effective energy effi-

ciency that is achievable and reliable. The limitation does not limit the eligibility of a large-volume manufacturer or large-volume agricultural business to participate in a natural gas conservation program. All amounts collected under this subsection must be transferred to the natural gas conservation fund. Any interest on funds in the fund must be credited to the fund. Funds not spent in any fiscal year remain in the fund to be used for the purposes of this section.

The assessments charged to gas utilities under this section are just and reasonable costs for rate-making purposes and must be reflected in the rates of gas utilities.

All funds collected pursuant to this section are collected under the authority and for the purposes of this section and are deemed to be held in trust for the purposes of benefiting natural gas consumers served by the gas utilities assessed under this subsection. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the commission shall ensure that the value of those funds is returned to consumers.

For purposes of this subsection, "large-volume manufacturer" means a customer that is a gas utility ratepayer engaged in manufacturing in the State and purchases at least 1,000,000 centum cubic feet of natural gas per year. For purposes of this subsection, "large-volume agricultural business" means a customer that is a gas utility ratepayer that purchases at least 1,000,000 centum cubic feet of natural gas per year and is engaged in the commercial growing or harvesting of plants or commercial aquaculture, as defined in Title 12, section 6001, subsection 1, in the State.

Rules adopted by the commission under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 359

H.P. 595 - L.D. 846

An Act To Enact the Revised Uniform Fiduciary Access to Digital Assets Act

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

Whereas, Maine law currently does not address how a fiduciary, such as a personal representative, can access and manage digital assets and communication; and

Whereas, Maine law currently does not address the authority of custodians of digital assets and communications to deal with fiduciaries; and

Whereas, the Revised Uniform Fiduciary Access to Digital Assets Act establishes procedures, standards and legal responsibilities to ensure the proper management and protection of digital assets and communications, consistent with federal requirements; and

Whereas, the sooner these issues are resolved, the sooner fiduciaries can manage and protect digital assets and communications to the extent authorized by this law; 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. 18-A MRSA Art. 10 is enacted to read:

ARTICLE 10

MAINE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

§10-101. Short title

This Article may be known and cited as "the Maine Revised Uniform Fiduciary Access to Digital Assets Act."

§10-102. Definitions

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

1. Account. "Account" means an arrangement under a terms of service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of a user or provides goods or services to a user.

2. Agent. "Agent" means an attorney in fact granted authority under a durable or nondurable power of attorney.

3. Carries. "Carries" means engages in the transmission of an electronic communication.

4. Catalog of electronic communications. "Catalog of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication and the electronic address of the person.

5. Conservator. "Conservator" means a person appointed by a court to manage the estate of a living individual. "Conservator" includes a limited conservator and a guardian exercising the powers of a conservator when a conservator has not been appointed.

6. Content of an electronic communication. "Content of an electronic communication" means information concerning the substance or meaning of an electronic communication that:

A. Has been sent or received by a user;

B. Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

C. Is not readily accessible to the public.

7. Custodian. "Custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user.

8. Designated recipient. "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

9. Digital asset. "Digital asset" means an electronic record in which an individual has a right or interest. "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

10. Electronic. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

11. Electronic communication. "Electronic communication" has the same meaning as in 18 United States Code, Section 2510(12).

12. Electronic communication service. "Electronic communication service" means a service that provides to a user the ability to send or receive an electronic communication.

13. Fiduciary. "Fiduciary" means an original, additional or successor personal representative, conservator, agent or trustee.

14. Information. "Information" means data, text, images, videos, sounds, codes, computer programs, software and databases or the like.

15. Online tool. "Online tool" means an electronic service provided by a custodian that allows a user, in an agreement distinct from the terms of service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a 3rd person.

16. Person. "Person" means an individual, estate, business or nonprofit entity, public corporation,

government or governmental subdivision, agency or instrumentality or other legal entity.

17. Personal representative. "Personal representative" means an executor, administrator, special administrator or person that performs substantially the same function under the laws of this State other than this Act and a person claiming to be a successor of the decedent user who presents an affidavit under section 3-1201.

18. Power of attorney. "Power of attorney" means a record that grants an agent authority to act in the place of a principal.

19. Principal. "Principal" means an individual who grants authority to an agent in a power of attorney.

20. Protected person. "Protected person" means an individual for whom a conservator has been appointed. "Protected person" includes an individual for whom an application for the appointment of a conservator is pending and an individual for whom a guardian has been appointed, when no conservator has been appointed.

21. Record. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

22. Remote computing service. "Remote computing service" means a service that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system as defined in 18 United States Code, Section 2510(14).

23. Terms of service agreement. "Terms of service agreement" means an agreement, as defined in Title 11, section 1-1201, subsection (3), that controls the relationship between a user and a custodian.

24. Trustee. "Trustee" means a fiduciary with legal title to property pursuant to an agreement or declaration that creates a beneficial interest in another person. "Trustee" includes a successor trustee.

25. User. "User" means a person that has an account with a custodian.

26. Will. "Will" includes a codicil, a testamentary instrument that only appoints an executor and an instrument that revokes or revises a testamentary instrument.

§10-103. Applicability

1. Applicable date. This Act applies to:

A. A fiduciary or agent acting under a will or power of attorney executed before, on or after July 1, 2018;

B. A personal representative acting for a decedent who died before, on or after July 1, 2018;

C. A conservatorship proceeding commenced before, on or after July 1, 2018; and

D. A trustee acting under a trust created before, on or after July 1, 2018.

2. User resident of this State. This Act applies to a custodian if the user resides in this State or resided in this State at the time of the user's death.

3. Digital asset of employer. This Act does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

§10-104. User direction for disclosure of digital assets

1. Use of online tool. A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney or other record.

2. No online tool used. If a user has not used an online tool to give direction under subsection 1 or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney or other record disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications.

3. User direction overrides. A user's direction under subsection 1 or 2 overrides a contrary provision in a terms of service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

§10-105. Terms of service agreement

1. Rights of custodian or user not changed or impaired. This Act does not change or impair a right of a custodian or a user under a terms of service agreement to access and use digital assets of the user.

2. No new or expanded rights to fiduciary or designated recipient. This Act does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

3. Fiduciary's or designated recipient's access may be modified or eliminated. A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law or by a terms of service agreement if the user has not provided direction under section 10-104.

§10-106. Procedure for disclosing digital assets

1. Disclosure at discretion of custodian. When disclosing digital assets of a user under this Act, the custodian may at its sole discretion:

A. Grant a fiduciary or designated recipient full access to the user's account;

B. Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

C. Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

2. Administrative charge. A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this Act.

3. Deleted digital assets. A custodian need not disclose under this Act a digital asset deleted by a user.

4. Undue burden on custodian; court order to disclose. If a user directs or a fiduciary requests a custodian to disclose under this Act some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

A. A subset limited by date of the user's digital assets;

B. All of the user's digital assets to the fiduciary or designated recipient;

C. None of the user's digital assets; or

D. All of the user's digital assets to the court for review in camera.

§10-107. Disclosure of content of electronic communications of deceased user

If a deceased user consented to or a court directs disclosure of the content of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication if the representative gives the custodian:

1. Written request. A written request for disclosure in physical or electronic form;

2. Death certificate. A copy of the death certificate of the user;

3. Letters of appointment or court order. A copy of the letters of appointment of the personal representative or court order;

4. Record of consent to disclosure. Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and

5. Information requested by custodian. If requested by the custodian:

A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

B. Evidence linking the account to the user; or

C. A finding by the court that:

(1) The user had a specific account with the custodian, identifiable by the information specified in paragraph A;

(2) Disclosure of the content of electronic communications of the user would not violate 18 United States Code, Section 2701 et seq., 47 United States Code, Section 222 or other applicable law;

(3) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(4) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

§10-108. Disclosure of other digital assets of deceased user

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user if the representative gives the custodian:

1. Written request. A written request for disclosure in physical or electronic form;

2. Death certificate. A copy of the death certificate of the user;

3. Letters of appointment or court order. A copy of the letters of appointment of the personal representative or court order; and

4. Information requested by custodian. If requested by the custodian:

A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

B. Evidence linking the account to the user;

C. An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

D. A finding by the court that:

(1) The user had a specific account with the custodian, identifiable by the information specified in paragraph A; or

(2) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

§10-109. Disclosure of content of electronic communications of principal

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content of electronic communications if the agent gives the custodian:

1. Written request. A written request for disclosure in physical or electronic form;

2. Power of attorney. An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

3. Agent's certificate. A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

4. Information requested by custodian. If requested by the custodian:

A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

B. Evidence linking the account to the principal.

§10-110. Disclosure of other digital assets of principal

Unless otherwise ordered by the court, directed by the principal or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalog of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

1. Written request. A written request for disclosure in physical or electronic form;

2. Power of attorney. An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

3. Agent's certificate. A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

4. Information requested by custodian. If requested by the custodian:

A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

B. Evidence linking the account to the principal.

§10-111. Disclosure of digital assets held in trust when trustee is original user

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalog of electronic communications of the trustee and the content of those electronic communications.

§10-112. Disclosure of content of electronic communications held in trust when trustee is not original user

Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust if the trustee gives the custodian:

1. Written request. A written request for disclosure in physical or electronic form;

2. Trust instrument or certification of trust. A certified copy of the trust instrument or a certification of the trust under Title 18-B, section 1013 that includes consent to disclosure of the content of electronic communications to the trustee;

3. Trustee's certification. A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

4. Information requested by custodian. If requested by the custodian:

A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

B. Evidence linking the account to the trust.

§10-113. Disclosure of other digital assets held in trust when trustee is not original user

Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account a catalog of electronic communications sent or received by an original or successor user and stored,

carried or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

1. Written request. A written request for disclosure in physical or electronic form;

2. Trust instrument or certification of trust. A certified copy of the trust instrument or a certification of the trust under Title 18-B, section 1013;

3. Trustee's certification. A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

4. Information requested by custodian. If requested by the custodian:

A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

B. Evidence linking the account to the trust.

§10-114. Disclosure of digital assets to conservator of protected person

1. Court order granting access. After an opportunity for a hearing under Article 5, Part 4, the court may grant a conservator access to the digital assets of a protected person.

2. Disclosure by custodian. Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalog of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

A. A written request for disclosure in physical or electronic form;

B. A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

C. If requested by the custodian:

(1) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(2) Evidence linking the account to the protected person.

3. Request to suspend or terminate account. A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this subsection must be accompanied by a copy of the court order giving the

conservator authority over the protected person's property.

§10-115. Fiduciary duty and authority

1. Fiduciary's legal duties. The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

- A. The duty of care;
- B. The duty of loyalty; and
- C. The duty of confidentiality.

2. Limitations on fiduciary's or designated recipient's authority. A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

- A. Except as otherwise provided in section 10-104, is subject to the applicable terms of service agreement;
- B. Is subject to other applicable law, including copyright law;
- C. In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
- D. May not be used to impersonate the user.

3. Right to access. A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor had a right or interest and that is not held by a custodian or subject to a terms of service agreement.

4. Authorized user. A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including Title 17-A, chapter 18.

5. Fiduciary's authority to access; authorized user. A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:

- A. Has the right to access the property and any digital asset stored in it; and
- B. Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including Title 17-A, chapter 18.

6. Disclosure of information to terminate account. A custodian may disclose information in an account to a fiduciary of a user when the information is required to terminate an account used to access digital assets licensed to the user.

7. Request for termination. A fiduciary of a user may request a custodian to terminate the user's

account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

- A. If the user is deceased, a copy of the death certificate of the user;
- B. A copy of the letters of appointment of the personal representative or court order, power of attorney or trust giving the fiduciary authority over the account; and
- C. If requested by the custodian:
 - (1) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (2) Evidence linking the account to the user; or
 - (3) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (1).

§10-116. Custodian compliance and immunity

1. Disclose or terminate upon request; court order. Not later than 60 days after receipt of the information required under sections 10-107 to 10-115, a custodian shall comply with a request under this Act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

2. Finding that compliance not in violation. An order under subsection 1 directing compliance must contain a finding that compliance is not in violation of 18 United States Code, Section 2702.

3. Notification to user. A custodian may notify the user that a request for disclosure or to terminate an account was made under this Act.

4. Denial of request if subsequent lawful access. A custodian may deny a request under this Act from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

5. Court order. This Act does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this Act to obtain a court order that:

- A. Specifies that an account belongs to the protected person or principal;
- B. Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

C. Contains a finding required by law other than this Act.

6. Immunity. A custodian and its officers, employees and agents are immune from liability for an act or omission done in good faith in compliance with this Act.

§10-117. Uniformity of application and construction

In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§10-118. Relation to Electronic Signatures in Global and National Commerce Act

This Act modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b).

PART B

Sec. B-1. 18-A MRSA §1-201, sub-§(33), as enacted by PL 1979, c. 540, §1, is amended to read:

(33). "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership, including a digital asset as defined in section 10-102, subsection 9.

Sec. B-2. 18-A MRSA §5-931, sub-§(a), ¶¶(7) and (8), as enacted by PL 2009, c. 292, §2 and affected by §6, are amended to read:

- (7). Exercise fiduciary powers that the principal has authority to delegate; ~~or~~
- (8). Disclaim property, including a power of appointment; or

Sec. B-3. 18-A MRSA §5-931, sub-§(a), ¶(9) is enacted to read:

(9). Exercise authority over the content of an electronic communication of the principal in accordance with the Maine Revised Uniform Fiduciary Access to Digital Assets Act.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect July 1, 2018.

Effective July 1, 2018.

CHAPTER 360

S.P. 629 - L.D. 1730

An Act To Change the Procedures for Veterinarians in the Controlled Substances Prescription Monitoring Program

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

Sec. 1. 22 MRSA §7246, sub-§2, as amended by PL 2017, c. 213, §2, is repealed and the following enacted in its place:

2. Dispenser. "Dispenser" means:

- A. A pharmacist who is licensed or registered under Title 32; or
- B. A veterinarian licensed under Title 32, chapter 71-A with authority to dispense a benzodiazepine or an opioid medication.

Sec. 2. 22 MRSA §7246, sub-§5, as amended by PL 2015, c. 488, §2, is further amended to read:

5. Prescriber. "Prescriber" means a licensed health care professional with authority to prescribe controlled substances ~~and a veterinarian licensed under Title 32, chapter 71-A with authority to prescribe controlled substances.~~

Sec. 3. 22 MRSA §7249, sub-§1, as amended by PL 2017, c. 213, §3, is further amended to read:

1. Information required. Except as provided in subsection 1-A ~~or 1-B~~, each dispenser shall submit to the department, by electronic means or other format specified in a waiver granted by the department, specific items of information regarding dispensed controlled substances determined by the ~~office~~ department from the following list:

- A. The dispenser identification number;
- B. The date the prescription was filled;
- C. The prescription number;
- D. Whether the prescription is new or is a refill;
- E. The National Drug Code (NDC) for the drug dispensed;
- F. The quantity dispensed;
- G. The dosage;
- H. The patient identification number;
- I. The patient name;
- J. The patient address;
- K. The patient date of birth;
- L. The prescriber identification number;

M. The date the prescription was issued by the prescriber; and

N. The department-issued serial number if the department chooses to establish a serial prescription system.

Sec. 4. 22 MRSA §7249, sub-§1-B is enacted to read:

1-B. Small quantity dispensing by veterinarians. If a benzodiazepine or an opioid medication is dispensed by a veterinarian for an animal in a mobile or emergency setting or in an amount to be used during a period of 48 hours or less after the benzodiazepine or opioid medication is dispensed, the dispenser is not required to comply with subsection 1.

Sec. 5. 22 MRSA §7251, sub-§1, as amended by PL 2015, c. 488, §8, is further amended to read:

1. Failure to submit information. A dispenser who knowingly fails to submit prescription monitoring information to the department as required by this chapter commits a civil violation for which a fine of \$250 per incident, not to exceed \$5,000 per calendar year, may be adjudged and is subject to discipline by the Maine Board of Pharmacy pursuant to Title 32, chapter 117, subchapter 4, by the State Board of Veterinary Medicine pursuant to Title 32, chapter 71-A or by the applicable professional licensing entity.

Sec. 6. 22 MRSA §7253, sub-§2, as amended by PL 2017, c. 213, §8, is further amended to read:

2. Dispensers. ~~On or after January 1, 2017, a~~ A dispenser shall check prescription monitoring information prior to dispensing a benzodiazepine or an opioid medication to a person under any of the following circumstances:

- A. The person is not a resident of this State;
- B. The prescription is from a prescriber with an address outside of this State;
- C. The person is paying cash when the person has prescription insurance on file; or
- D. According to the pharmacy prescription record, the person has not had a prescription for a benzodiazepine or an opioid medication in the previous 12-month period.

A dispenser shall withhold a prescription until the dispenser is able to contact the prescriber of that prescription if the dispenser has reason to believe that the prescription is fraudulent or duplicative.

Sec. 7. 22 MRSA §7253, sub-§2-A is enacted to read:

2-A. Dispensers who are veterinarians. Notwithstanding subsection 2, a dispenser who is a veterinarian licensed under Title 32, chapter 71-A shall check prescription monitoring information prior to

dispensing a benzodiazepine or an opioid medication for an animal except in circumstances described in subsection 3, paragraph C.

Sec. 8. 22 MRSA §7253, sub-§3, as amended by PL 2017, c. 213, §9, is further amended to read:

3. Exceptions. The requirements to check prescription monitoring information established in this section do not apply:

A. When a licensed or certified health care professional directly orders or administers a benzodiazepine or an opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure;

B. When a licensed or certified ~~health~~ health care professional directly orders, prescribes or administers a benzodiazepine or an opioid medication to a person suffering from pain associated with end-of-life or hospice care; ~~or~~

C. When a veterinarian licensed under Title 32, chapter 71-A is providing care to an animal in a mobile or emergency setting or is dispensing a benzodiazepine or an opioid medication in an amount to be used during a period of 48 hours or less after the benzodiazepine or opioid medication is dispensed.

Sec. 9. 32 MRSA §4878, as enacted by PL 2015, c. 488, §27, is amended to read:

§4878. Requirements regarding prescribing and dispensing benzodiazepine or opioid medication

1. Benzodiazepine or opioid medication dispensing. A veterinarian licensed under this chapter whose scope of practice includes ~~prescribing~~ dispensing a benzodiazepine or an opioid medication ~~to~~ for an animal is subject to the requirements of the Controlled Substances Prescription Monitoring Program established under Title 22, chapter 1603, ~~except that Title 22, section 7254 does not apply.~~

2. Electronic prescribing. A veterinarian licensed under this chapter whose scope of practice includes prescribing a benzodiazepine or an opioid medication and who has the capability to electronically prescribe shall prescribe all benzodiazepine or opioid medication electronically by July 1, 2017. ~~A veterinarian who does not have the capability to electronically prescribe must request a waiver from this requirement from the Commissioner of Health and Human Services stating the reasons for the lack of capability, the availability of broadband infrastructure and a plan for developing the ability to electronically prescribe opioid medication. The commissioner may grant a waiver for circumstances in which exceptions are appropriate, including prescribing outside of the~~

~~individual's usual place of business and technological failures 2022 or when an electronic platform for prescribing is widely available for veterinarians if that occurs before July 1, 2022 as determined by the Commissioner of Health and Human Services. A veterinarian licensed under this chapter unable to comply with the electronic prescribing requirements of this subsection may request a waiver from the Commissioner of Health and Human Services for circumstances in which exceptions are appropriate as determined by the Commissioner of Health and Human Services.~~

3. Continuing education. ~~By December 31, 2017, a~~ A veterinarian who prescribes a benzodiazepine or an opioid medication must successfully complete ~~3 hours~~ one hour of continuing education every 2 years on the administration, prescription and management of opioid medication controlled substances, including benzodiazepine and opioid medications, as a condition of prescribing a benzodiazepine or an opioid medication. The board ~~shall~~ may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

~~**4. Penalties.** A veterinarian who violates this section commits a civil violation for which a fine of \$250 per violation, not to exceed \$5,000 per calendar year, may be adjudged. The Department of Health and Human Services is responsible for the enforcement of this section.~~

See title page for effective date.

CHAPTER 361

H.P. 1227 - L.D. 1781

An Act To Encourage New Major Investments in Shipbuilding Facilities and the Preservation of Jobs

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

Sec. 1. 36 MRSA §191, sub-§2, ¶¶EEE and FFF are enacted to read:

EEE. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-RR, subsection 9, paragraph B of the revenue loss attributable to each taxpayer claiming the tax credit under that section, regardless of the number of persons eligible for the credit; and

FFF. The disclosure of information to the Department of Economic and Community Development necessary for the administration of the tax

credit for major shipbuilding facility investments pursuant to section 5219-RR.

Sec. 2. 36 MRSA §5219-RR is enacted to read:

§5219-RR. Tax credit for Maine shipbuilding facility investment

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

A. "Certified applicant" means a qualified applicant that has received a certificate of approval from the commissioner pursuant to this section.

B. "Commissioner" means the Commissioner of Economic and Community Development.

C. "Employment" means, for each tax year, the amount determined by adding the total number of qualified employees of a certified applicant on each of 6 consecutive measurement days of that tax year as chosen by the certified applicant and then dividing that sum by 6.

D. "Full-time" means an average of at least 32 hours weekly during the tax year.

E. "Maine shipbuilding facility" means a facility or facilities located within the State dedicated to the design, production, maintenance and repair of surface water vessels and includes real estate, tangible personal property, fixtures, machinery and equipment necessary for those activities.

F. "Measurement day" means the last business day of every other month of a tax year.

G. "Qualified applicant" means an applicant for a tax credit under this section that satisfies each of the following requirements:

(1) The applicant owns and operates or proposes to construct a Maine shipbuilding facility;

(2) The applicant proposes to make a qualified investment;

(3) The applicant employs at least 5,000 qualified employees at the time the application is filed; and

(4) The applicant does not otherwise qualify for the Pine Tree Development Zone program pursuant to Title 30-A, section 5250-O or the Maine Employment Tax Increment Financing Program established in chapter 917 at the time the application is filed.

H. "Qualified employee" means an individual:

(1) Who is a full-time employee of the certified or qualified applicant, as the case may

be, working at a Maine shipbuilding facility owned and operated by that applicant;

(2) Whose income from that employment is taxable under chapter 803;

(3) For whom a retirement program is provided subject to the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 1001 to 1461, as amended;

(4) For whom group health insurance is provided; and

(5) Whose income derived from employment with the Maine shipbuilding facility calculated on a calendar year basis is greater than the average annual per capita income in the State.

I. "Qualified investment" means expenditures incurred on or after January 1, 2018 that total at least \$100,000,000 and are related to the construction, improvement, modernization or expansion of a Maine shipbuilding facility, including, without limitation, all expenditures for investigation; planning; design; engineering; permitting; acquisition; financing; construction; demolition; alteration; relocation; remodeling; repair; reconstruction; design, purchase or installation of machinery and equipment; clearing; filling; grading; reclamation of land; activities undertaken to upgrade a waterway serving the facility; training and development of employees; capitalized interest; professional services, including, but not limited to, architectural, engineering, legal, accounting or financial services; administration; environmental and utility costs, including, without limitation, sewage treatment plants, water, air and solid waste equipment and treatment plants, environmental protection devices, electrical facilities, storm or sanitary sewer lines, water lines or amenities, any other utility services, preparation of environmental impact studies, informing the public about the facility and environmental impact and environmental remediation, mitigation, clean-up and protection costs; related offices, support facilities and structures; and any of the foregoing expenditures made or costs incurred prior to or after the effective date of this section or certification of an applicant. "Qualified investment" includes only expenditures that are capitalized for federal income tax purposes. Except for employees who are engaged in the design, engineering and construction of the facility, "qualified investment" does not include the salaries or other compensation paid to the employees of the qualified applicant or of any affiliate of the qualified applicant. "Qualified investment" does not include any expenditure included as a qualified investment by an applicant under chapter 919 or any

amount expended to qualify for Pine Tree Development Zone program benefits under Title 30-A, chapter 206, subchapter 4.

2. Procedures for application; certificate of approval. This subsection governs the application and approval process for the tax credit under this section.

A. A qualified applicant may apply to the commissioner for a certificate of approval. An applicant shall submit to the commissioner information demonstrating that the applicant is a qualified applicant. A certified applicant may hold only one certificate under this section at any time.

B. The commissioner, within 30 days of receipt of an application under paragraph A, shall review the information contained in the application and issue a written determination as to whether the applicant is a qualified applicant. If the commissioner determines that the applicant is a qualified applicant, the commissioner shall issue a certificate of approval to the qualified applicant at the time of the determination. If the commissioner determines that the applicant is not a qualified applicant, the commissioner shall issue a denial of the application at the time of the determination.

C. If a certified applicant proposes to transfer, including, without limitation, transfer by operation of law, all or substantially all of the Maine shipbuilding facility in which a qualified investment was made to another person or if a person proposes to acquire more than 50% of the voting stock of the certified applicant, application may be made to the commissioner to approve transfer of the certificate of approval to that person in connection with the transfer of the stock or facility. The commissioner shall grant the transfer of the certificate only if:

(1) The transferee of the Maine shipbuilding facility or of the certified applicant's stock is a member of the certified applicant's unitary affiliated group as defined in section 5102, subsection 1-B at the time of the transfer; or

(2) The transferee of the Maine shipbuilding facility or of the certified applicant's stock is not a member of the certified applicant's unitary affiliated group as defined in section 5102, subsection 1-B at the time of the transfer and the commissioner finds that the transferee intends to continue the operations of the Maine shipbuilding facility in substantially the same manner as prior to the transfer and has the financial capability to do so.

If the commissioner grants a transfer of the certificate of approval, the transferee must be treated as the certified applicant for all purposes of this section. For purposes of calculation of employ-

ment and qualified investments of the certified applicant, the qualified employees and the qualified investments of the transferor prior to transfer must be considered the qualified employees and qualified investments of the transferee.

D. The applicant or certified applicant may appeal in accordance with Title 5, chapter 375, subchapter 7 any determination, action or failure to act by the commissioner.

3. Credit. A certified applicant is allowed a credit annually against the tax otherwise due under this Part as provided in this subsection.

A. Beginning with the tax year after the certified applicant has made qualified investments of at least \$100,000,000, or the tax year beginning on or after January 1, 2020, whichever is later, and for each of the following 9 tax years, a certified applicant is allowed a credit against the tax due under this Part for each taxable year in an amount equal to 3% of the certified applicant's total qualified investment.

B. If a certified applicant completes an additional qualified investment of at least \$100,000,000 prior to January 1, 2025, the certified applicant is allowed a credit against the tax due under this Part beginning with the 11th tax year after the investment required in paragraph A was made and continuing through the 15th tax year after making that investment. The amount of the additional credit available in each of those tax years is 3% of the certified applicant's additional qualified investment. Eligibility for the additional credit must be demonstrated by the certified applicant in the annual reports submitted pursuant to subsection 9.

C. The credit allowed under this subsection may not reduce the tax otherwise due under this Part to less than zero.

4. Limitations. The following are limitations on the credit allowed under subsection 3.

A. Except as provided in subsection 5, the annual credit allowed to a certified applicant or its transferee may not exceed \$3,000,000 in any tax year. Cumulative credits taken under subsection 3, paragraph A may not exceed \$30,000,000 to any certified applicant or transferee. Total cumulative credits taken under this section may not exceed \$45,000,000 to any certified applicant or transferee.

B. For a tax year in which the qualified applicant has employment of fewer than 5,500, the amount of the credit is reduced as provided in subsection 6.

C. A taxpayer that is certified as a qualified Pine Tree Development Zone business under Title 30-A, section 5250-O or that has received a cer-

tificate of approval for its employment tax increment financing program pursuant to section 6755 is not eligible for a credit under this section.

D. In no case may the credit be claimed for a tax year that begins after December 31, 2034.

5. Accelerated credit. If a certified applicant has employment in any tax year of at least 6,000, the credit limitation in subsection 4, paragraph A is increased to \$3,125,000 for that tax year. If employment is at least 6,500, the credit limitation is increased to \$3,250,000. If employment is at least 7,000, the credit is increased to \$3,375,000. If employment is 7,500 or more, the credit is increased to \$3,500,000.

6. Reduced credit for reduced employment. If a certified applicant's employment is fewer than 5,500 employees during the tax year, the credit allowed pursuant to subsection 3 is reduced as follows.

A. If a certified applicant has employment in a tax year of fewer than 5,500 but at least 5,250, the credit for that year is 90% of the credit otherwise allowed under subsection 3.

B. If a certified applicant has employment in a tax year of fewer than 5,250 but at least 5,000, the credit authorized for that year is 80% of the credit otherwise allowed under subsection 3.

C. If a certified applicant has employment in a tax year of fewer than 5,000 but at least 4,750, the credit for that year is 70% of the credit otherwise allowed under subsection 3.

D. If a certified applicant has employment in a tax year of fewer than 4,750 but at least 4,500, the credit for that year is 60% of the credit otherwise allowed under subsection 3.

E. If a certified applicant has employment in a tax year of fewer than 4,500 but at least 4,250, the credit for that year is 50% of the credit otherwise allowed under subsection 3.

F. If a certified applicant has employment in a tax year of fewer than 4,250 but at least 4,000, the credit for that year is 40% of the credit otherwise allowed under subsection 3.

G. If a certified applicant has employment in a tax year of fewer than 4,000, the credit allowed under subsection 3 may not be taken.

7. Revocation. A certificate of approval must be revoked by the commissioner if the certified applicant has not made qualified investments of at least \$100,000,000 within 5 years after issuance of the certificate of approval.

8. Additional requirements. A certified applicant, when awarding contracts, purchasing supplies or subcontracting work related to a qualified investment, shall give preference, to the greatest extent possible, to

Maine workers, companies and bidders as long as the supplies, products, services and bids meet the standards required by the certified applicant regarding value, quality, delivery terms and price.

9. Annual reporting requirement. A certified applicant, the commissioner and the State Tax Assessor shall report annually in accordance with this subsection. Notwithstanding any other provision of law to the contrary, the reports provided under this subsection are public records as defined in Title 1, section 402, subsection 3.

A. On or before March 1st annually, a certified applicant shall file a report with the commissioner for the immediately preceding calendar year, referred to in this paragraph as the "report year," containing the following information:

(1) The employment of the certified applicant for the report year, including specific information on:

(a) The number of qualified employees that are employed by the certified applicant at the end of the report year;

(b) The total number of qualified employees hired during the report year; and

(c) The number of qualified employees in positions that are covered by a collective bargaining agreement;

(2) The total dollar amount of payroll associated with employment in the report year, including specific information on:

(a) The average annual salary and wages for qualified employees; and

(b) The median annual salary and wages for qualified employees;

(3) The total dollar amount that was spent on goods and services obtained from businesses with an office in the State from which business operations in the State are managed; and

(4) The incremental level of qualified investments made during the report year, including specific information on:

(a) The amount of qualified investment in facility, production equipment and employee training and development, reported as an aggregate sum;

(b) The portion of the qualified investment reported under subparagraph (a) that was spent on goods and services from businesses with an office in the State from which business operations in the State are managed; and

(c) Whether the certified applicant has qualified for the additional credit under subsection 3, paragraph B.

The commissioner may prescribe forms for the annual reports required under this paragraph. The commissioner shall provide copies of the report to the State Tax Assessor and to the joint standing committee of the Legislature having jurisdiction over taxation matters at the time the report is received.

B. On or before April 1st annually, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters aggregate data, with detail consistent with information required of certified applicants under paragraph A, on employment levels and qualified investment amounts of certified applicants for each year beginning with expenditures incurred on or after January 1, 2018.

C. The State Tax Assessor shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters the revenue loss during each state fiscal year as a result of this section for each taxpayer claiming the credit.

10. Evaluation; specific public policy objective; performance measures. The credit provided under this section is subject to ongoing legislative review in accordance with Title 3, chapter 37. In developing evaluation parameters to perform the review, the Office of Program Evaluation and Government Accountability, the Legislature's government oversight committee and the joint standing committee of the Legislature having jurisdiction over taxation matters shall consider:

A. That the specific public policy objective of the credit provided under this section is to create and retain jobs in the shipbuilding industry in this State by providing an income tax credit to reduce the cost of investments in shipbuilding businesses and thereby encourage investment in shipbuilding businesses and improve the competitiveness of this State's shipbuilding industry; and

B. Performance measures, including, but not limited to:

(1) Employment during the period being reviewed and how employment during that period compares to the minimum employment requirements set forth in subsection 4, paragraph B;

(2) The amount of qualified investment during the period being reviewed, and how expenditures compare to the minimum level of expenditure set forth in subsection 1, paragraph I;

(3) Measures of industry competitiveness;

(4) Measures of fiscal impact and overall economic impact to the State; and

(5) Information regarding the procedures for ensuring compliance with the preference requirements under subsection 8.

The Office of Program Evaluation and Government Accountability shall provide a report of its evaluation under this subsection to the joint standing committee of the Legislature having jurisdiction over taxation matters by August 15, 2024. Following receipt of the report, the joint standing committee shall determine whether the credit provided under this section is meeting its public policy objectives and whether it should be continued. The joint standing committee may submit a bill to the First Regular Session of the 132nd Legislature to accomplish its recommendations.

See title page for effective date.

CHAPTER 362

S.P. 668 - L.D. 1789

An Act Authorizing Changes to the Ownership and Leases of Certain Public Lands

Preamble. The Constitution of Maine, Article IX, Section 23 requires that real estate held by the State for conservation or recreation purposes may not be reduced or its uses substantially altered except on the vote of 2/3 of all members elected to each House; and

Whereas, the real estate authorized for conveyance by this legislation is under the designations described in the Maine Revised Statutes, Title 12, section 598-A; and

Whereas, the Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry may sell or exchange lands with the approval of the Legislature in accordance with the Maine Revised Statutes, Title 12, sections 1837 and 1851; now, therefore,

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

Sec. 1. 12 MRSA §1839, sub-§1, ¶E, as amended by PL 1999, c. 592, §4; PL 2011, c. 657, Pt. W, §7; and PL 2013, c. 405, Pt. A, §24, is further amended to read:

E. A description of the proposed budget, including allocations for the bureau's dedicated funds and any revenues of the bureau from permits, leases, fees and sales, for the following fiscal year beginning on July 1st; ~~and~~

Sec. 2. 12 MRSA §1839, sub-§1, ¶F, as enacted by PL 1999, c. 592, §5, is amended to read:

F. The status of ecological reserves including the acreage of nonreserved public land designated as ecological reserves, results of monitoring, scientific research and other activities related to ecological reserves; ~~and~~

Sec. 3. 12 MRSA §1839, sub-§1, ¶G is enacted to read:

G. The amount of funds in the public nonreserved lands acquisition fund within the bureau for each county.

Sec. 4. 12 MRSA §1853, sub-§1, ¶H, as enacted by PL 2017, c. 289, §7, is amended to read:

H. A breakdown of growth based on the most recent physical forest inventory and of harvest in each region of any public reserved lands units established by the bureau, identifying any harvesting that occurred during the preceding fiscal year in individual management units where harvest exceeds annual growth; ~~and~~

Sec. 5. 12 MRSA §1853, sub-§1, ¶I, as enacted by PL 2017, c. 289, §8, is amended to read:

I. An update on capital plans for road construction and road maintenance, including a list and description of roads built and roads maintained in the preceding fiscal year and a list and description of roads to be built and roads to be maintained in the succeeding fiscal year; ~~and~~

Sec. 6. 12 MRSA §1853, sub-§1, ¶J is enacted to read:

J. The amount of funds in the Public Reserved Lands Acquisition Fund, established in section 1850, subsection 2, for each county.

Sec. 7. Director of Bureau of Parks and Lands authorized to amend lease at Long Falls Dam Road to allow lessee to sublease a portion of the parcel for recreational purposes.

The Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry is authorized to amend the lease of the land consisting of public lots that form part of the dam and reservoir known as Flagstaff Lake, land that is currently leased by Brookfield Renewable Partners and that was previously leased pursuant to Private and Special Law 1927, chapter 113, section 13, to allow the lessee to sublease a portion of the parcel for the purpose of a parking area for the Maine Huts and Trails system.

Sec. 8. Director of Bureau of Parks and Lands authorized, but not directed, to convey certain lands in Adamstown Township, Oxford County.

The Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry may by quitclaim deed without

covenant convey to a buyer for appraised fair market value and other compensation and on such other terms and conditions as the director may direct a certain parcel of land in Adamstown Township, described as Parcel 0008W as depicted on the Richardson Pond cottage lots plan developed by Seven Islands Land Company on the southwest side of West Richardson Pond, comprising approximately 3.54 acres and a camp, which was previously a camp lot lease and which was surrendered by the leaseholder to the Bureau of Parks and Lands by written agreement. The sale of the lot constitutes a revocation of its designation as public reserved lands under the Maine Revised Statutes, Title 12, section 598-A.

Sec. 9. Report on funds received pursuant to this Act. The Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry shall report to the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters the amount of funds received pursuant to the transactions authorized by this legislation by each county at the same time as the director submits the bureau's reports pursuant to the Maine Revised Statutes, Title 12, sections 1839 and 1853.

Sec. 10. Resolve 2013, c. 56, §4 is amended to read:

Sec. 4. Director of Bureau of Parks and Lands authorized, but not directed, to convey certain lands in Adamstown Township, Oxford County. Resolved: That the Director of the ~~Division~~ Bureau of Parks and Public Lands within the Department of Agriculture, Conservation and Forestry may by quitclaim deed without covenant convey for an appraised fair market value that is the higher of 2 appraisals or the highest of more than 2 appraisals and on such other terms and conditions as the director may direct certain lots or parcels of land, with a total of approximately 24 ~~26~~ acres, to the ~~West Richardson Pond Public Lot Association individual camp lot lessees.~~ The sale of each lot constitutes a revocation of its designation as public reserved lands under the Maine Revised Statutes, Title 12, section 598-A.

The parcels to be conveyed are located on a 24-acre lease lot subdivision portion and a 1.93-acre lease lot located on an island of the Richardson Lake public reserved lands. The 12 lots in the subdivision are on the southwestern shoreline of West Richardson Pond and extend from the Lincoln Plantation and Adamstown Township town line south to Route 16 and are also located between the Richardson Lake public reserved lands access road and the shoreline of West Richardson Pond. The parcels in the subdivision are currently leased to ~~10~~ 9 camp lot lessees who are members of the West Richardson Pond Public Lot Association. To ensure that the State retains public access to West Richardson Pond, the director may not

convey ownership of Lot 4-W in the subdivision as depicted on the Richardson Pond cottage lots plan developed by Seven Islands Land Company. The 1.93-acre lease lot is located on an island in West Richardson Pond, located in Adamstown Township, Oxford County, being a portion of the Richardson Lake public reserved lands, Account #178012003, Public Lands L1 LOC R, Map OX008, Plan 3, Lot 3, Lease Number 1, Lot ID Loc R.

Sec. 11. Resolve 2015, c. 29, §1 is amended to read:

Sec. 1. Director of Bureau of Parks and Lands authorized, but not directed, to convey certain interests in lands in Aroostook County in exchange for other interests or properties. Resolved:

That the Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry may by quitclaim deed without covenant, for negotiated value, and on such other terms and conditions as the director may direct, convey or release all interests held by the bureau in the ~~following~~ properties described under subsection 1 to Prentiss and Carlisle Company, Inc. and ~~Prentiss and Carlisle Management Company, McCrillis Timberland, LLC and Greentrees, Inc., collectively referred to in this section as "the partitioners,"~~ in exchange for conveyance of property or interests in properties or other consideration of equivalent value described under subsection 2 from Prentiss and Carlisle Company, Inc. and Prentiss and Carlisle Management Company the partitioners.

1. The property interests to be conveyed by the Department of Agriculture, Conservation and Forestry, by and through the Bureau of Parks and Lands, to ~~Prentiss and Carlisle Company, Inc. and to Prentiss and Carlisle Management Company on behalf of other minority interests~~ the partitioners are all of the State's minority common and undivided interest in ~~forested acres without flowage easements in T.10 R.4 SE/4, which is approximately 1,329 equivalent acres a tract in T.10 R.4 WELS SE/4, Maine Revenue Services Tax Map AR018, Plan 01, Lot 1.2, comprising approximately 3,970 acres of upland and 270 acres of flowed land in Scopan Lake, depicted as Parcel B on the March 28, 2017 Survey Plan by Plisga & Day Land Surveyors, the State's undivided interest being approximately equivalent to 1,222 acres.~~

2. The property interests to be conveyed by ~~Prentiss and Carlisle Company, Inc. and Prentiss and Carlisle Management Company on behalf of other minority interests~~ the partitioners to the State acting by and through the Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands are:

A. All of ~~Prentiss and Carlisle Company, Inc.'s the partitioners'~~ common and undivided interests in ~~forested acres without flowage easements in T.10 R.4 SE/4 north of Scopan Lake and all of the~~

~~remaining minority common and undivided interests in forested acres without flowage easements in T.10 R.4 SE/4 north of Scopan Lake by and through Prentiss and Carlisle Management Company, which is together approximately 16 equivalent acres; the following tracts in T.10 R.4 WELS:~~

- (1) SE/4 north of Scopan Lake, part of Maine Revenue Services Tax Map AR018, Plan 01, Lot 1.2, comprising approximately 23 acres of upland and 221 acres of flowed land in Scopan Lake;
- (2) SE/4 setoff, part of Maine Revenue Services Tax Map AR018, Plan 01, Lot 1.2, comprising approximately 605 acres of upland and 240 acres of flowed land in Scopan Lake, depicted as Parcel A on the March 28, 2017 Survey Plan by Plisga & Day Land Surveyors;
- (3) NE/4 west of Scopan Lake, Maine Revenue Services Tax Map AR018, Plan 01, Lot 2.1, comprising approximately 995 acres, including portions flowed by Scopan Lake; and
- (4) NE/4 east of Scopan Lake, Maine Revenue Services Tax Map AR018, Plan 01, Lot 2, comprising approximately 5,462 acres, including portions flowed by Scopan Lake.

The partitioners' undivided interest in the T.10 R.4 WELS tracts described in this paragraph is approximately equivalent to 1,296 acres; and

~~B. All of Prentiss and Carlisle Company, Inc.'s minority common and undivided interests in forested acres without flowage easements in T.10 R.4 NE/4 by and through Prentiss and Carlisle Management Company, which is approximately 309 equivalent acres;~~

~~C. All of the minority common and undivided interests in T.11 R.4 E/2 by and through Prentiss and Carlisle Management Company, which is together approximately 254 equivalent acres; and~~

~~D. All or a portion of Prentiss and Carlisle Company, Inc.'s interests in T.13 R.5, T.13 R.13 and T.12 R.13, or other parcels or other consideration from Prentiss and Carlisle Company, Inc. as may be needed in combination with the foregoing to be of equivalent value, as determined by the director, to the conveyance of the State to Prentiss and Carlisle Company, Inc. in T.10 R.4 SE/4 as described in subsection 1; and be it further~~

E. Two parcels in T.13 R.5 WELS, Maine Revenue Services Tax Maps AR027, Plan 01, Lot 1.1 and AR027, Plan 01, Lot 1.2, owned solely by Prentiss and Carlisle Company, Inc. and McCrillis

Timberland, LLC and totaling approximately 192 acres; and be it further

See title page for effective date.

CHAPTER 363

S.P. 701 - L.D. 1856

An Act Regarding Permits for Burial of Cremated Remains

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

Whereas, this legislation, regarding the burial of cremated remains, must take effect before the expiration of the 90-day period so that it may apply to burials this spring; 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. 22 MRSA §2843, sub-§3-A, as enacted by PL 2017, c. 101, §1, is amended to read:

3-A. Permit for burial of cremated remains in public burying ground. If cremated remains are buried in a public burying ground in this State, the person in charge of the public burying ground ~~shall~~ may endorse and provide the date the cremated remains were buried on each permit with which that person is presented and return it to the State Registrar of Vital Statistics or to the clerk of the municipality in which the public burying ground is located ~~within 7 days after the date of burial.~~ If there is no person in charge of the public burying ground, an official of the municipality in which the public burying ground is located ~~shall~~ may endorse and provide the date the cremated remains were buried on each such permit and present it to the State Registrar of Vital Statistics or the clerk of the municipality. The funeral director or authorized person ~~shall~~ may present a copy of each permit, ~~after endorsement if the permit has been endorsed,~~ to the State Registrar of Vital Statistics or the clerk of the municipality where death occurred and to the clerk who issued the permit. For the purposes of this subsection, "public burying ground" has the same meaning as in Title 13, section 1101-A, subsection 4.

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

Effective April 4, 2018.

CHAPTER 364

S.P. 183 - L.D. 565

**An Act Regarding the
Prescribing and Dispensing of
Naloxone Hydrochloride by
Pharmacists**

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

Sec. 1. 22 MRSA §2353, sub-§1, ¶D, as enacted by PL 2015, c. 508, §1, is amended to read:

D. "Pharmacist" means a pharmacist authorized to prescribe and dispense naloxone hydrochloride pursuant to Title 32, section 13815.

Sec. 2. 22 MRSA §2353, sub-§2, ¶A-1, as enacted by PL 2015, c. 508, §2, is amended to read:

A-1. A pharmacist may prescribe and dispense naloxone hydrochloride in accordance with protocols established under Title 32, section 13815 to an individual at risk of experiencing an opioid-related drug overdose.

Sec. 3. 22 MRSA §2353, sub-§2, ¶A-2, as enacted by PL 2017, c. 249, §1, is repealed.

Sec. 4. 22 MRSA §2353, sub-§2, ¶C-1, as enacted by PL 2015, c. 508, §2, is amended to read:

C-1. A pharmacist may prescribe and dispense naloxone hydrochloride in accordance with protocols established under Title 32, section 13815 to a member of an individual's immediate family or a friend of the individual or to another person in a position to assist the individual if the individual is at risk of experiencing an opioid-related drug overdose.

Sec. 5. 22 MRSA §2353, sub-§2, ¶C-2, as enacted by PL 2017, c. 249, §1, is repealed.

Sec. 6. 32 MRSA §13815, sub-§1, as enacted by PL 2017, c. 249, §2, is repealed.

Sec. 7. 32 MRSA §13815, sub-§2, as enacted by PL 2017, c. 249, §2, is amended to read:

2. Rules for prescribing and dispensing naloxone hydrochloride. The board by rule shall establish standards for authorizing pharmacists to prescribe and dispense naloxone hydrochloride in accordance with Title 22, section 2353, subsection 2, paragraphs ~~A-2 and C-2~~ A-1 and C-1. The rules must establish adequate training requirements and protocols

for prescribing and dispensing naloxone hydrochloride when there is no prescription drug order, standing order or collaborative practice agreement authorizing naloxone hydrochloride to be dispensed to the intended recipient. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. A pharmacist authorized by the board pursuant to this subsection to prescribe and dispense naloxone hydrochloride may prescribe and dispense naloxone hydrochloride in accordance with Title 22, section 2353, subsection 2, paragraphs ~~A-2 and C-2~~ A-1 and C-1.

~~This subsection is repealed July 1, 2019.~~

Sec. 8. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 32, chapter 117, subchapter 11-A, in the subchapter headnote, the words "dispensing of naloxone hydrochloride" are amended to read "prescribing and dispensing of naloxone hydrochloride" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

See title page for effective date.

CHAPTER 365

S.P. 689 - L.D. 1837

**An Act To Allow Cash Prizes
for Certain Raffles Conducted
by Charitable Organizations**

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

Whereas, recent changes to the laws governing raffles have hampered the ability of charitable nonprofits and civic organizations to conduct the types of raffles that generate a significant percentage of revenues raised by those organizations in a calendar year; and

Whereas, the law must be amended before the expiration of the 90-day period because charitable nonprofits and civic organizations use raffles to raise funds for their charitable purposes and it is a hardship for those groups to be limited in their fund raising; 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. 17 MRSA §1837-A, sub-§§2 to 4, as enacted by PL 2017, c. 284, Pt. KKKKK, §25, are amended to read:

2. Raffle with a prize of \$2,500 or less. A person or organization is not required to register with the Gambling Control Unit to conduct a raffle in which the total value of the prize offered to the holder of the winning chance does not exceed ~~\$1,000~~ \$2,500. If the raffle is conducted in a manner in which there are multiple winning chances, the total value of all prizes offered may not exceed a value of ~~\$1,000~~ \$2,500.

3. Raffle with a noncash prize of \$2,501 to \$10,000. A person or organization may conduct a raffle in which the total value of the prize offered to the holder of the winning chance is greater than ~~\$1,001~~ \$2,501 and does not exceed \$10,000 upon the acceptance of a registration by the Gambling Control Unit. The Gambling Control Unit may not accept a registration for a raffle under this subsection unless the registration states a verifiable charitable purpose for which the proceeds of the raffle are dedicated to benefit. If the raffle is conducted in a manner in which there are multiple winning chances, the total value of all prizes offered may not exceed a value of \$10,000. A prize offered for a raffle conducted under this subsection may not be in the form of cash and may not be exchanged for cash.

4. Raffle with a noncash prize up to \$75,000 conducted by eligible organization; cash prizes up to \$20,000. An eligible organization as described in section 1832, subsection 2 may conduct a raffle in which the total value of the prize offered to the holder of the winning chance does not exceed \$75,000 upon the acceptance of a registration by the Gambling Control Unit. The registration must state a verifiable charitable purpose for which the proceeds of the raffle are dedicated to benefit. If the raffle is conducted in a manner in which there are multiple winning chances, the total value of all prizes offered may not exceed a value of \$75,000. A noncash prize for a raffle conducted under this subsection ~~may not be in the form of cash and~~ may not be exchanged for cash. The total amount of cash prizes that may be awarded for a raffle conducted under this subsection may not exceed \$20,000 with no more than one \$10,000 prize for the holder of a winning chance. An eligible organization may not conduct more than one raffle under this subsection in a 12-month period.

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

Effective April 8, 2018.

**CHAPTER 366
H.P. 1266 - L.D. 1824**

**An Act Regarding the
Termination of the Authority
To Issue a Permit for a Noise
Suppression Device on a
Firearm for Hunting**

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

Whereas, the validity of noise suppression device permits and the authority of the Commissioner of Inland Fisheries and Wildlife to issue noise suppression device permits for use of a noise suppression device with a firearm when hunting may expire before the effective date of nonemergency legislation passed during the current session of the Legislature; and

Whereas, immediately extending the validity of noise suppression device permits and the authority of the commissioner to continue issuing noise suppression device permits will ensure the uninterrupted and continued use of noise suppression devices with firearms when hunting; 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. 12 MRSA §11161, sub-§2, as enacted by PL 2015, c. 262, §1, is amended to read:

2. Permit. In accordance with this subsection, the commissioner may issue a permit to a person allowing that person to use a noise suppression device with a firearm when hunting any wild animals or wild birds the person is licensed to hunt under this chapter and for which use of the firearm is allowed or for the purpose of killing a wild animal or wild turkey under section 12401 or 12402.

- A. A person applying for a permit:
 - (1) Shall show proof of lawful possession of the noise suppression device; and
 - (2) May not have had a hunting license revoked as a result of a serious hunting violation.
- B. A permit is valid ~~until August 1, 2018~~, unless revoked under this section.

~~The commissioner may not issue a permit under this section after July 31, 2018.~~

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

Effective April 8, 2018.

CHAPTER 367

H.P. 1018 - L.D. 1479

An Act To Modernize and Improve Maine's Property Tax System

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 36 MRSA §271, sub-§1, as amended by PL 1989, c. 503, Pt. B, §165, is further amended to read:

1. Organization; meetings. The State Board of Property Tax Review, as established by Title 5, section 12004-B, subsection 6, ~~shall consist~~ consists of 15 members appointed by the Governor for terms of 3 years, ~~except for initial appointments which shall be 1/3 of the membership for one year, 1/3 of the membership for 2 years and 1/3 of the membership for 3 years.~~ Vacancies on the board ~~shall~~ must be filled for the remainder of the unexpired term. The membership ~~shall~~ must be equally divided among attorneys, real estate brokers or appraisers, engineers, ~~retired~~ assessors who have a current certificate of eligibility from the State Tax Assessor under section 311, except assessors employed by the bureau, and public members. Beginning August 1, 2018, at least one vacancy in the term of a public member or a position open as the result of an expired term of a public member must be filled by a member of the public with expertise in taxation, finance or property valuation matters. The board shall annually elect a chair and secretary. The secretary need not be chosen from the members of the board.

Sec. 2. 36 MRSA §271, sub-§5-A is enacted to read:

5-A. Mediation. For appeals pursuant to section 843 or 844, if the board determines that the appeal is within the jurisdiction of the board and all rights to

appeal the determination of jurisdiction have expired, within 120 days after filing a petition for appeal, the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory and the taxpayer shall retain the services of a mutually agreed-upon mediator knowledgeable in taxation, valuation matters or conflict resolution, unless otherwise excused by the chair of the board. The cost of mediation must be shared equally between the municipality, or the State Tax Assessor in the case of the unorganized territory, and the taxpayer. Unless the parties have been excused by the chair of the board from mediation, the board may not schedule a hearing until after it is notified by the parties that mediation has been completed. Upon the completion of mediation, the parties must notify the board in writing stating whether further board action is necessary.

Sec. 3. 36 MRSA §611, 2nd ¶ is amended to read:

When the assessors are informed by the owner or otherwise of the presence within the town of such personal property, the assessors shall give notice in writing to the owner to furnish to the assessors a true and perfect list of such property within 15 days from the receipt of such notice and, except as otherwise provided in this section, section 706 ~~shall be~~ 706-A is applicable to this section.

Sec. 4. 36 MRSA §706, as amended by PL 2013, c. 544, §5 and affected by §7, is repealed.

Sec. 5. 36 MRSA §706-A is enacted to read:

§706-A. Taxpayers to list property; notice; penalty; verification

1. Taxpayers to list property; inquiries. Before making an assessment, the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory may give seasonable notice in writing to all persons liable to taxation or qualifying for exemption pursuant to subchapter 4-C in the municipality, the primary assessing area or the unorganized territory to furnish to the assessor or assessors, chief assessor or State Tax Assessor true and perfect lists of all the property the taxpayer possessed on the first day of April of the same year and may at the time of the notice or thereafter require the taxpayer to answer in writing all proper inquiries as to the nature, situation and value of the taxpayer's property liable to be taxed in the State or subject to exemption pursuant to subchapter 4-C. The list and answers are not conclusive upon the assessor or assessors, chief assessor or State Tax Assessor.

As may be reasonably necessary to ascertain the value of property according to the income approach to value pursuant to the requirements of section 208-A or generally accepted assessing practices, these inquiries may seek information about income and expense.

manufacturing or operational efficiencies, manufactured or generated sales price trends or other related information.

A taxpayer has 30 days from receipt of a request for a true and perfect list or of proper inquiries to respond to the request or inquiries. Upon written request to the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory, a taxpayer is entitled to a 30-day extension to respond to the request for a true and perfect list or proper inquiries, and the assessor may at any time grant additional extensions upon written request. Information provided by the taxpayer in response to an inquiry that is proprietary information, and is clearly labeled by the taxpayer as proprietary and confidential information, is confidential and is not a public record for purposes of Title 1, chapter 13.

A notice to or inquiry of a taxpayer made under this section may be by mail directed to the last known address of the taxpayer or by any other method that provides reasonable notice to the taxpayer.

If notice is given by mail and the taxpayer does not furnish the list and answers to all proper inquiries, the taxpayer may not apply to the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory for an abatement or appeal an application for abatement of those taxes unless the taxpayer furnishes the list and answers with the application and satisfies the assessing authority or authority to whom an appeal is made that the taxpayer was unable to furnish the list and answers in the time required. The list and answers are not conclusive upon the assessor or assessors, chief assessor or State Tax Assessor.

If the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory fails to give notice by mail, the taxpayer is not prohibited from applying for an abatement; however, upon demand, the taxpayer shall furnish the list and answer in writing all proper inquiries as to the nature, situation and value of the taxpayer's property liable to be taxed in the State. A taxpayer's refusal or neglect to answer the inquiries bars an appeal, but the list and answers are not conclusive upon the assessor or assessors, chief assessor or State Tax Assessor.

The assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory may require the person furnishing the list and answers to all proper inquiries to subscribe under oath to the truth of the list and answers.

2. Penalty. It is unlawful for any public official or any employee, agent, attorney or consultant of the taxing jurisdiction to willfully disclose any taxpayer information made confidential by this section or examine information made confidential by this section for

any purpose other than the conduct of official duties pertaining to property tax administration. Information made confidential by this section may be disclosed:

A. To the State Tax Assessor, who shall treat such information as confidential for purposes of section 191, subsection 2, paragraph I;

B. To a mediator retained pursuant to section 271, subsection 5-A;

C. In a judicial proceeding in camera;

D. In an administrative proceeding, in executive session, pursuant to Title 1, section 405, subsection 6, paragraph F;

E. To the person who filed the confidential information or that person's representative authorized by the person in writing to receive the information;

F. To a public official or any employee, agent, attorney or consultant of the taxing jurisdiction; and

G. To any other person with the taxpayer's written consent.

A person who knowingly violates the confidentiality provisions of this subsection commits a Class E crime.

3. Proprietary information. For the purposes of this section, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available and information protected from disclosure by federal or state law, rules or regulations.

Sec. 6. 36 MRSA §713, last ¶ is amended to read:

Persons subjected to a tax under this section ~~shall~~ be ~~are~~ deemed to have received sufficient notice if the notice required by section ~~706~~ 706-A was given.

Sec. 7. 36 MRSA §841, sub-§1, as repealed and replaced by PL 1993, c. 133, §1, is amended to read:

1. Error or mistake. The assessors, either upon written application filed within 185 days from commitment stating the grounds for an abatement or on their own initiative within one year from commitment, may make such reasonable abatement as they consider proper to correct any illegality, error or irregularity in assessment, ~~provided that~~ if the taxpayer has complied with section ~~706~~ 706-A.

The municipal officers, either upon written application filed after one year but within 3 years from commitment stating the grounds for an abatement or on their own initiative within that time period, may make such reasonable abatement as they consider proper to cor-

rect any illegality, error or irregularity in assessment, ~~provided if the taxpayer has complied with section 706 706-A.~~ The municipal officers may not grant an abatement to correct an error in the valuation of property.

Sec. 8. 36 MRSA §841, sub-§4, as amended by PL 2015, c. 300, Pt. A, §9, is further amended to read:

4. Veteran's widow or widower or minor child. Notwithstanding failure to comply with section ~~706 706-A,~~ the assessors, on written application within one year from the date of commitment, may make such abatement as they think proper in the case of the unremarried widow or widower or the minor child of a veteran, if the widow, widower or child would be entitled to an exemption under section 653, subsection 1, paragraph D, except for the failure of the widow, widower or child to make application and file proof within the time set by section 653, subsection 1, paragraph G, if the veteran died during the 12-month period preceding the April 1st for which the tax was committed.

Sec. 9. 36 MRSA §1331, 3rd ¶, as repealed and replaced by PL 1977, c. 509, §31, is amended to read:

Persons subjected to a tax under this section ~~shall be~~ are deemed to have received sufficient notice if the notice required by section ~~706 706-A~~ was given.

Sec. 10. Task force established. Notwithstanding Joint Rule 353, the Task Force To Restructure and Improve the Efficiency of the State Board of Property Tax Review, referred to in this section as "the task force," is established.

1. Membership; chair. The task force consists of 9 members as follows:

- A. The Commissioner of Administrative and Financial Services or the commissioner's designee, who shall serve as the chair of the task force;
- B. The State Tax Assessor or the State Tax Assessor's designee;
- C. The Attorney General or the Attorney General's designee;
- D. A member of the State Board of Property Tax Review, as established by the Maine Revised Statutes, Title 5, section 12004-B, subsection 6, appointed by the Governor;
- E. Two current or retired assessors who have certificates of eligibility as assessors from the State Tax Assessor under the Maine Revised Statutes, Title 36, section 311, who are familiar with the assessment of large industrial properties and who are appointed by the Governor based on the recommendation of a statewide municipal association;

F. Two persons representing large industrial property taxpayers, appointed by the Governor; and

G. A municipal official representing a community with a large industrial taxpayer, appointed by the Governor based on the recommendation of a statewide municipal association.

2. Appointments; convening of first meeting.

All appointments must be made no later than 45 days following the effective date of this Act. The appointing authorities shall notify the Commissioner of Administrative and Financial Services upon making the appointments. When the appointment of all members is complete, the chair shall call and convene the first meeting of the task force no later than September 10, 2018.

3. Duties. The task force shall study, assess and evaluate the process of and the duties assigned to the State Board of Property Tax Review. The task force shall develop recommendations for restructuring the board to improve the efficiency of the appeal process, if necessary. Recommendations may include, but are not limited to, changes in board membership; access to full-time resources and professional staff; changes to the appeal process; changes in the type of appeals reviewed by the board; and any other recommendations the task force members find necessary to improve board efficiencies.

4. Report. No later than February 28, 2019, the task force shall submit a report with its findings and recommendations, including suggested legislation, for presentation to the First Regular Session of the 129th Legislature. The joint standing committee of the Legislature having jurisdiction over taxation matters may report out to the First Regular Session of the 129th Legislature legislation to implement recommendations on matters related to the report.

See title page for effective date.

CHAPTER 368
H.P. 1236 - L.D. 1791

**An Act To Continue the Maine
Lobster Marketing
Collaborative**

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

Sec. 1. 5 MRSA §12004-H, sub-§14, as amended by PL 2013, c. 309, §1, is further amended to read:

14.

Maine Lobster Marketing Collaborative	\$55 Per Diem Plus Expenses	12 MRSA §6455
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This subsection is repealed October 1, 2021.

Sec. 2. 12 MRSA §6455, sub-§2-B is enacted to read:

2-B. Executive committee. The collaborative shall establish an executive committee of no fewer than 5 members, who are appointed by a majority vote of the collaborative. The collaborative shall specify in its bylaws when the executive committee may act on behalf of the collaborative with regard to oversight of collaborative staff, daily operations of the collaborative and addressing unexpected expenditures to be made by the collaborative. The bylaws must specify what constitutes a quorum of the executive committee and how many votes are necessary for the executive committee to take a valid action. In addition to any other restrictions adopted by the collaborative, the executive committee may not act on behalf of the collaborative to:

- A. Adopt or amend an annual budget;
- B. Adopt or amend an annual marketing plan;
- C. Hire or terminate the employment of the executive director of the collaborative; or
- D. Amend the bylaws of the collaborative.

Sec. 3. 12 MRSA §6455, sub-§5-A, ¶D, as amended by PL 2013, c. 492, §5, is further amended to read:

- D. For the years 2016 to ~~2018~~ 2021 the surcharges are, for:
 - (1) Class I lobster and crab fishing licenses for persons 18 to 69 years of age, \$165.25;
 - (2) Class II lobster and crab fishing licenses, \$330.50, except that for license holders 70 years of age or older the surcharge is \$165;
 - (3) Class III lobster and crab fishing licenses, \$480.75, except that for license holders 70 years of age or older the surcharge is \$240;
 - (4) Nonresident lobster and crab landing permits, \$480.75;
 - (5) Wholesale seafood licenses with lobster permits if the license holders hold no supplemental wholesale seafood licenses with lobster permits, or lobster transportation licenses if the license holders hold no supplemental lobster transportation licenses, \$1,200;
 - (6) Supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses as follows:
 - (a) One thousand eight hundred dollars for up to 2 supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses;

(b) Two thousand four hundred dollars for 3 to 5 supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses; and

(c) Three thousand dollars for 6 or more supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses; and

(7) Lobster processor licenses, \$1,000 if less than 1,000,000 pounds of raw product is processed, and \$4,000 if 1,000,000 pounds or more of raw product is processed.

Sec. 4. 12 MRSA §6455, sub-§8, as enacted by PL 2013, c. 309, §2, is repealed.

Sec. 5. 12 MRSA §6455, sub-§9 is enacted to read:

9. Repeal. This section is repealed October 1, 2021.

Sec. 6. 12 MRSA §6455, last ¶, as enacted by PL 2013, c. 309, §2, is repealed.

Sec. 7. Report. The Commissioner of Marine Resources shall investigate whether the surcharges assessed under the Maine Revised Statutes, Title 12, section 6455, subsection 5-A on a wholesale seafood license with lobster permits or a supplemental lobster transportation license may be amended to reflect the amount of lobster bought, sold, shipped or transported by the license holder or a class of license holders. The commissioner shall provide a report of recommendations to amend the surcharges to the joint standing committee of the Legislature having jurisdiction over marine resources matters by January 15, 2019. The joint standing committee may report out legislation to the First Regular Session of the 129th Legislature based upon the report.

See title page for effective date.

CHAPTER 369

H.P. 1054 - L.D. 1534

**An Act To Reduce Food Waste
in Maine**

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

Sec. 1. 38 MRSA §2137-A is enacted to read:

§2137-A. Food recovery database

The department, as resources allow and in consultation with other state agencies, municipalities, counties, businesses and other public or private entities, shall develop and maintain on its publicly accessible

website a food recovery database as described in this section.

1. Contents. The department may include in the database required under this section guidance documents, model policies, program resources and other educational and technical materials relevant to food recovery and food waste reduction efforts that may be implemented by government entities, counties, municipalities, educational institutions, businesses and members of the public, including, but not limited to:

A. Materials relating to the alignment of the food purchasing practices of public and private entities with the demands and consumption habits of the individual consumers those entities serve;

B. Materials relating to the development and implementation of programs for the sharing of surplus or leftover food, including, but not limited to, share tables and food donation practices and programs;

C. Materials relating to the diversion of food scraps and other food waste not suitable for human consumption for use as animal feed; and

D. Materials relating to the handling, transportation and processing of organic waste materials for the purpose of composting or the generation of energy through an anaerobic digestion process, including, but not limited to, guidance documents relating to the establishment of on-site composting programs by public or private entities and a list of the businesses and other entities in the State that accept for processing or process organic materials for composting or energy generation.

2. Maintenance and updates. The department, as resources allow, shall maintain and periodically review and update the materials in the database required under this section to reflect changes in relevant state or federal laws, regulations or rules or in industry practices or to include any new materials relevant to the purpose of the database that have been developed by the department or by other entities.

See title page for effective date.

CHAPTER 370

H.P. 1141 - L.D. 1656

An Act To Allow Veterans Free Admission to the Maine State Museum

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

Sec. 1. 27 MRSA §83, sub-§5, as amended by PL 2013, c. 595, Pt. M, §1, is further amended to read:

5. Establish fees. To establish fees for admission to the Maine State Museum and miscellaneous services. All revenues derived from these fees must be credited as undedicated revenue to the General Fund through June 30, 2014. Beginning July 1, 2014, all revenues derived from these fees must be credited as dedicated revenue to the Maine State Museum - Operating Fund, Other Special Revenue Funds account to be used to support the operations of the Maine State Museum. Notwithstanding this subsection, the commission shall enter into a memorandum of agreement with the Department of Defense, Veterans and Emergency Management for the issuance of a free admission pass to the Maine State Museum to each veteran who is determined by the Department of Defense, Veterans and Emergency Management to meet the criteria established in Title 37-B, section 8-A; and

Sec. 2. 37-B MRSA §8-A is enacted to read:

§8-A. Issuance of free admission pass to Maine State Museum to veterans

The Commissioner of Defense, Veterans and Emergency Management, in accordance with a memorandum of agreement entered into with the Maine State Museum Commission under Title 27, section 83, subsection 5 and this section, shall issue a free admission pass to the Maine State Museum to eligible veterans pursuant to subsection 1.

1. Eligibility. The department shall determine a person's eligibility for a pass under this section by establishing that the person is a veteran and:

A. The person is a resident of this State; and

B. The person received an honorable discharge or general discharge under honorable conditions.

2. Responsibilities of commissioner. The Commissioner of Defense, Veterans and Emergency Management shall identify a point of contact within the department to issue free admission passes in accordance with this section and the memorandum of agreement entered into with the Maine State Museum Commission pursuant to Title 27, section 83, subsection 5. The Commissioner of Defense, Veterans and Emergency Management shall periodically report to the Maine State Museum Commission a list of the names and addresses of all persons receiving passes to the Maine State Museum and the beginning dates for those passes. A pass issued under this section does not expire and is valid for the lifetime of the holder.

See title page for effective date.

CHAPTER 371
H.P. 1220 - L.D. 1766

**An Act To Improve Marketing
Efficiency in the Harness
Racing Industry by Requiring
Its Promotion by the State
Harness Racing Commission
and by Repealing the Harness
Racing Promotional Board**

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

Sec. 1. 8 MRSA §263-A, sub-§§6 and 7 are enacted to read:

6. Promotion of harness racing. The commission shall promote harness racing in the State through the formation of advisory subcommittees, the facilitation of marketing plans and the expenditure or granting of funds.

7. Input on the promotion of harness racing. The commission shall invite input from a statewide association of harness horsemen, a statewide association of Standardbred breeders, a statewide association of agricultural fairs and persons who are members of organizations representing the interests of commercial harness racing tracks and off-track betting facilities on the marketing and promotion of harness racing in this State.

Sec. 2. 8 MRSA §267, sub-§2, as amended by PL 2017, c. 231, §5, is further amended to read:

2. Report. Beginning April 1, 2018 February 15, 2019, and annually thereafter, the commission shall submit a report to the commissioner and the joint standing committees of the Legislature having jurisdiction over slot machines, harness racing, agricultural fairs and appropriations and financial affairs. This report must include an account of the commission's operations and actions, a report of its financial position, including receipts and disbursements, an account of the practical effects of application of this chapter and any recommended legislation. The operations report must include the number and types of violations of racing laws and rules, the disposition of those violations and the amount of time required for their disposition, including a history of any appeals. The report must include the date and amount of each administrative assessment withdrawn in accordance with section 267-A from each of the assessed funds under section 267-A, subsection 4. The report must include an account of the commission's operations and actions regarding the promotion of harness racing, a summary of income and expenses of the Harness Racing Promotional Fund, including any receipts and disbursements, and an assessment of the economic condition of the harness racing industry in this State.

Sec. 3. 8 MRSA §285, as amended by PL 2003, c. 401, §17, is repealed.

Sec. 4. 8 MRSA §291, as enacted by PL 1997, c. 528, §46, is amended to read:

§291. Harness Racing Promotional Fund share

Amounts calculated as Harness Racing Promotional Fund share under section 286 must be paid to the Treasurer of State for deposit in the Harness Racing Promotional Fund for use as provided in section ~~285~~ 299-A.

Sec. 5. 8 MRSA §299-A is enacted to read:

§299-A. Harness Racing Promotional Fund

1. Fund created. The Harness Racing Promotional Fund, referred to in this section as "the fund," is established to be used solely for the marketing and promotion of harness racing in the State. The fund consists of any money received through the commission on wagers pursuant to section 286 and any contributions, grants or appropriations from private and public sources. The fund, to be accounted for within the commission, must be held separate and apart from all other money, funds and accounts. Any balance remaining in the fund at the end of a fiscal year does not lapse but must be carried forward to the next fiscal year.

2. Expenditures. The commission shall administer the fund consistent with the purposes of this section.

Sec. 6. 8 MRSA §1037, first ¶, as amended by PL 2017, c. 231, §26, is further amended to read:

Beginning April 1, 2018 February 15, 2019 and annually thereafter, the executive director of the State Harness Racing Commission, in consultation with the Commissioner of Agriculture, Conservation and Forestry, shall submit a report to the joint standing committees of the Legislature having jurisdiction over slot machines, harness racing, agricultural fairs and appropriations and financial affairs regarding the use of slot machine revenue deposited in funds under section 1036, subsection 2, paragraphs B, C, D, H and I. The executive director and the commissioner shall obtain the information as described in this section. The report required by this section must be completed using budgeted resources. The executive director may not distribute funds listed under section 1036, subsection 2, as applicable, to harness racing tracks, off-track betting facilities, agricultural fairs or the Sire Stakes Fund under section 281 until the information required to submit the report required by this section is provided. The report required by this section may be combined with the report required under section 267.

Sec. 7. Transfer. The State Controller shall transfer all unexpended balances of the Harness Racing Promotional Board to the Harness Racing Promo-

tional Fund established in the Maine Revised Statutes, Title 8, section 299-A no later than 30 days following the effective date of this Act.

Sec. 8. Appropriations and allocations. The following appropriations and allocations are made.

AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF

Harness Racing Commission 0320

Initiative: Provides an ongoing allocation to the Harness Racing Promotional Fund, which is being moved from the Harness Racing Promotional Board to the State Harness Racing Commission.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$0	\$50,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$50,000

See title page for effective date.

CHAPTER 372

S.P. 708 - L.D. 1863

An Act Regarding the Limit on the Number of Children Who May Be Placed in a Single Foster Home

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

Whereas, the emergency enactment of this legislation is necessary to allow the Department of Health and Human Services to place in appropriate foster homes children who are currently awaiting such placement; 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. 22 MRSA §8107, sub-§1, as enacted by PL 1983, c. 629, §2, is amended to read:

1. Number; placement in children's homes. The limitations on the number of children in children's

homes ~~shall~~ do not prohibit the placement of more than the allowed number; if the purpose of the placement is to keep siblings together.

Sec. 2. 22 MRSA §8107, sub-§1-A is enacted to read:

1-A. Number; placement in family foster home. The limitation on the number of children in a family foster home does not prohibit the placement of more than the allowed number in an individual case involving unusual circumstances if the department determines that placement to be appropriate.

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

Effective April 9, 2018.

CHAPTER 373

S.P. 634 - L.D. 1735

An Act To Authorize Regional Medical Control Committees To Have Access to Maine Emergency Medical Services Data for Purposes of Quality Improvement

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

Whereas, critical and lifesaving emergency medical services are provided to patients on a daily basis in both rural and urban areas; and

Whereas, circumstances arise in which the provision of emergency medical services requires review for the purposes of quality improvement so that services may be delivered in a safe and efficient manner that produces maximum benefit to the health of the patient; and

Whereas, delay in reviews increases the risk of service delivery that may be less safe or less efficient or does not produce maximum benefit to the health of the patient; 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. 32 MRSA §89, sub-§2, ¶A, as amended by PL 1991, c. 588, §18, is further amended to read:

A. Establishing a regional medical control committee to carry out a plan of quality improvement approved by the board;

Sec. 2. 32 MRSA §91-B, sub-§2, ¶E, as amended by PL 2015, c. 82, §8, is further amended to read:

E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, regional medical control quality improvement plans, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, regional medical control quality improvement plans, public health surveillance or linkage with patient electronic medical records.

Sec. 3. 32 MRSA §91-B, sub-§2, ¶H is enacted to read:

H. Confidential information submitted to Maine Emergency Medical Services by any entity must be easily accessible by that entity in accordance with rules adopted by the board that enable compliance by the entity with federal and state laws regarding patient information privacy and access.

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

Effective April 10, 2018.

CHAPTER 374

S.P. 151 - L.D. 449

An Act To Add Domestic Violence against the Victim as an Aggravating Factor in Sentencing for Murder

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

Sec. 1. 17-A MRSA §1251, as amended by PL 2005, c. 88, Pt. B, §1, is repealed and the following enacted in its place:

§1251. Imprisonment for murder

1. A person convicted of the crime of murder must be sentenced to imprisonment for life or for any term of years that is not less than 25. The sentence of the court must specify the length of the sentence to be served and must commit the person to the Department of Corrections.

2. In setting the length of imprisonment pursuant to subsection 1, the court shall assign special weight to each of the following 3 factors as they relate to the sentencing procedure in section 1252-C, subsections 1, 2 and 3:

A. That the victim is a child who had not in fact attained 6 years of age at the time the crime was committed;

B. That the victim is a woman whom the convicted person knew or had reasonable cause to believe to be in fact pregnant at the time the crime was committed; and

C. That the victim is a family or household member as defined in Title 19-A, section 4002, subsection 4 who is a victim of domestic violence committed by the convicted person.

This subsection may not be construed to restrict a court in setting the length of a term of imprisonment from considering the age of the victim in other circumstances when relevant.

See title page for effective date.

CHAPTER 375

S.P. 676 - L.D. 1805

An Act To Amend the Maine Tax Laws

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

PART A

Sec. A-1. 36 MRSA §1752, sub-§11-B is enacted to read:

11-B. Room remarketer. "Room remarketer" means a person who reserves, arranges for, offers, furnishes or collects or receives consideration for the rental of living quarters in this State, whether directly or indirectly, pursuant to a written or other agreement with the owner, manager or operator of a hotel, rooming house or tourist or trailer camp.

Sec. A-2. 36 MRSA §1752, sub-§14, ¶A, as amended by PL 2007, c. 627, §43, is further amended to read:

A. "Sale price" includes:

(1) Any consideration for services that are a part of a retail sale; ~~and~~

(2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses; ~~and~~

(3) All consideration received for the rental of living quarters in this State, including any service charge or other charge or amount required to be paid as a condition for occupancy, valued in money, whether received in money or otherwise and whether received by the owner, occupant, manager or operator of the living quarters, by a room remarketer, by a person that operates a transient rental platform or by another person on behalf of any of those persons.

Sec. A-3. 36 MRSA §1752, sub-§20-C is enacted to read:

20-C. Transient rental platform. "Transient rental platform" means an electronic or other system, including an Internet-based system, that allows the owner or occupant of living quarters in this State to offer the living quarters for rental and that provides a mechanism by which a person may arrange for the rental of the living quarters in exchange for payment to either the owner or occupant, to the operator of the system or to another person on behalf of the owner, occupant or operator.

Sec. A-4. 36 MRSA §1754-B, sub-§1, ¶F, as amended by PL 2005, c. 218, §19, is further amended to read:

F. Every person that manages or operates in the regular course of business or on a casual basis a hotel, rooming house or tourist or trailer camp in this State or that collects or receives rents ~~from~~ on behalf of a hotel, rooming house or tourist or trailer camp in this State;

Sec. A-5. 36 MRSA §1754-B, sub-§1, ¶¶F-1 and F-2 are enacted to read:

F-1. Every person that operates a transient rental platform and reserves, arranges for, offers, furnishes or collects or receives consideration for the rental of living quarters in this State;

F-2. Every room remarketer;

Sec. A-6. Application. Those sections of this Part that enact the Maine Revised Statutes, Title 36, section 1752, subsections 11-B and 20-C and Title 36, section 1754-B, subsection 1, paragraphs F-1 and F-2 and that amend Title 36, section 1752, subsection 14,

paragraph A apply to sales occurring on or after October 1, 2018.

PART B

Sec. B-1. 36 MRSA §§2521-D and 2521-E are enacted to read:

§2521-D. Limitation on credit or refund

If a claim for credit or refund of an overpayment of any tax imposed by this chapter is filed by the taxpayer, the amount of the credit or refund may not exceed the portion of the tax that was paid within the 3 years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If a claim is not filed, any credit or refund allowed upon an audit of the taxpayer may not exceed the amount that would be allowable under this section if a claim had been filed by the taxpayer on the date the credit or refund is allowed upon the audit.

§2521-E. Interest on overpayment

1. General. Interest at the rate determined pursuant to section 186 must be paid on any refund of an overpayment of the tax imposed by this chapter from the date the return requesting a refund of the overpayment was filed or the date the payment was made, whichever is later.

2. Date of return or payment. For purposes of this section:

A. A return that is filed before the last day prescribed for the filing of a return is deemed to be filed on that last day, determined without regard to any extension of time granted the taxpayer; and

B. A tax that is paid by the taxpayer before the last day prescribed for its payment or paid by the taxpayer as estimated tax for a taxable year is deemed to have been paid on the last day prescribed for its payment.

3. Exceptions. Notwithstanding subsection 1, interest may not be paid by the assessor on an overpayment of the tax imposed by this chapter that is refunded within 60 days after the last date prescribed, or permitted by extension of time, for filing the return of that tax or within 60 days after the date the return requesting a refund of the overpayment was filed, whichever is later.

PART C

Sec. C-1. 36 MRSA §5122, sub-§2, ¶E, as amended by PL 1999, c. 414, §40 and affected by §57 and amended by PL 2007, c. 58, §3, is further amended to read:

E. Pick-up contributions paid to the taxpayer by the Maine Public Employees Retirement System or distributed as the result of a rollover, whether or not included in federal adjusted gross income,

that have been previously taxed under this Part. For tax years beginning on or after January 1, 2018, in the case of a distribution as a result of a rollover, the modification allowed under this paragraph may be subtracted fully or in part during the tax year of the rollover. Any amount not subtracted in the tax year of the rollover may be subtracted within the 2 tax years immediately following the year of the rollover, except that the total amount subtracted over the 3-year period may not exceed the pick-up contributions that have been previously taxed under this Part during that 3-year period;

Sec. C-2. 36 MRSA §5219-PP, sub-§4, as enacted by PL 2017, c. 211, Pt. D, §10, is amended to read:

4. Limitations; carry-forward. The credit under this section must be taken in the taxable year in which the qualified expenditures were incurred the certification required by subsection 3 is made by the Maine State Housing Authority, except that the credit claimed for any taxable year beginning on or after January 1, 2018 may not include qualified expenditures for which a credit has been claimed for a tax year beginning in 2017. The credit allowed under this section may not reduce the tax otherwise due under this Part to less than zero. Any unused portion of the credit may be carried forward to the following year or years for a period not to exceed 4 years.

Sec. C-3. Application. That section of this Part that amends the Maine Revised Statutes, Title 36, section 5219-PP, subsection 4 applies to tax years beginning on or after January 1, 2018.

PART D

Sec. D-1. 36 MRSA §191, sub-§2, ¶DDD, as enacted by PL 2017, c. 284, Pt. UUUU, §16, is reallocated to 36 MRSA §191, sub-§2, ¶EEE.

Sec. D-2. 36 MRSA §191, sub-§2, ¶DDD, as enacted by PL 2017, c. 297, §1, is repealed and the following enacted in its place:

DDD. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-QQ, subsection 4, paragraph B of the revenue loss due to refundable credits attributable to each taxpayer claiming the tax credit for major business headquarters expansions provided under that section, regardless of the number of persons eligible for the credit. For purposes of this paragraph, "revenue loss" has the same meaning as in section 5219-QQ, subsection 4, paragraph B.

Sec. D-3. 36 MRSA §5219-QQ, sub-§2, ¶E, as enacted by PL 2017, c. 297, §2, is amended to read:

E. The commissioner must revoke a certificate of approval if the certified applicant or a person to

whom a certificate of approval has been transferred pursuant to paragraph D fails to make a qualified investment within 5 years of the date of the certificate of approval. The commissioner shall revoke a certificate of approval or a certificate of completion if the applicant or transferee ceases operations of the headquarters in the State or the certificate of approval or certificate of completion is transferred to another person without approval from the commissioner pursuant to paragraph D. A certified applicant whose certificate of completion is revoked within 5 years after the date issued shall ~~within 60 days following revocation of the certificate~~ return to the State an amount equal to the total credits claimed for all tax years under this section. A certified applicant whose certificate of completion is revoked during the period from 6 years after through 10 years after the date the certificate was issued shall ~~within 60 days following revocation of the certificate~~ return to the State an amount equal to the total credits claimed under this section for the period from 6 years after through 10 years after the date the certificate was issued. The amount to be returned to the State under this paragraph is, for purposes of this Title, a tax subject to the collection and enforcement provisions contained in Part 1, including the application of applicable interest and penalties. The amount to be returned to the State must be added to the tax imposed on the taxpayer under this Part for the taxable year during which the certificate is revoked.

Sec. D-4. 36 MRSA §5219-QQ, sub-§§3 and 4, as enacted by PL 2017, c. 297, §2, are amended to read:

3. Refundable credit allowed. A qualified certified applicant who has received a certificate of completion is allowed a credit as provided in this subsection.

A. Subject to the limitations under paragraph B, beginning with the tax year during which the certificate of completion is issued or the tax year beginning in 2020, whichever is later, and for each of the following 19 tax years, a certified applicant is allowed a credit against the tax due under this Part for the taxable year in an amount equal to 2% of the certified applicant's qualified investment. The credit allowed under this paragraph is refundable.

B. The credit under this subsection is limited as follows:

(1) A credit is not allowed for any tax year during which the taxpayer does not meet or exceed the following employment targets as measured on the last day of the tax year.

(a) For each of the first 10 tax years for which the credit is claimed, there must be a total of at least 80 additional full-time employees based in the State whose jobs were added since the first day of the first tax year for which the credit was claimed multiplied by the number of years for which the credit has been claimed, including the tax year for which the credit is currently being claimed.

(b) For each tax year after the 10th tax year for which the credit is claimed, the taxpayer must employ a total of at least 800 additional full-time employees based in the State whose jobs were added since the first day of the first tax year for which the credit was claimed.

Jobs for additional full-time employees that are counted for determining eligibility for the credit under one certificate of completion may not be counted for determining eligibility for the credit under a separate certificate of completion. For purposes of this paragraph, "additional full-time employees" does not include employees who are shifted to a certified applicant's headquarters in the State from an affiliated business in the State. The commissioner shall determine whether a shifting of employees has occurred. For purposes of this paragraph, "affiliated business" has the same meaning as in section 6753, subsection 1-A.

(2) Cumulative credits under this subsection may not exceed \$16,000,000 under any one certificate.

4. Reporting required. A certified applicant ~~and~~ the commissioner and the State Tax Assessor are required to make reports pursuant to this subsection.

A. On or before March 1st of each year, a certified applicant shall file a report with the commissioner for the tax year ending during the immediately preceding calendar year, referred to in this ~~paragraph~~ subsection as "the report year," containing the following information:

(1) The number of full-time employees based in this State of the certified applicant on the last day of the tax year ending during the calendar year immediately preceding the report year; and

(2) The incremental amount of qualified investment made in the report year.

The commissioner may prescribe forms for the annual report described in this paragraph. The commissioner shall provide copies of the report to the State Tax Assessor and to the joint standing

committee of the Legislature having jurisdiction over taxation matters at the time the report is received.

B. ~~By April 1st December 31st of each year, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters aggregate data on employment levels and qualified investment amounts of certified applicants for each year, and the State Tax Assessor shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters the revenue loss during the previous calendar report year, including the loss due to refundable credits, as a result of this section for each taxpayer claiming the credit and, if necessary, shall include updated revenue loss amounts for any previous tax year. For purposes of this paragraph, "revenue loss" means the credit claimed by the taxpayer and allowed pursuant to this section, consisting of the amount of the credit used to reduce the tax liability of the taxpayer and the amount of the credit refunded to the taxpayer, stated separately.~~

Notwithstanding any other provision of law to the contrary, the reports provided under this subsection are public records as defined in Title 1, section 402, subsection 3.

Sec. D-5. 36 MRSA §5219-QQ, sub-§5 is enacted to read:

5. Rules. The commissioner and the State Tax Assessor may adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A for implementation of the credit under this section, including, but not limited to, rules for determining and certifying eligibility. The commissioner may also by rule establish fees for obligations under this section. Any fees collected pursuant to this section must be deposited into a special revenue account administered by the commissioner, and those fees may be used only to defray the actual costs of administering the credit under this section.

PART E

Sec. E-1. 23 MRSA §4210-B, sub-§7-A, as amended by PL 2011, c. 649, Pt. E, §2, is further amended to read:

7-A. Sales tax revenue. Beginning July 1, 2012 and every July 1st thereafter, the State Controller shall transfer to the Multimodal Transportation Fund an amount, as certified by the State Tax Assessor, that is equivalent to 100% of the revenue from the tax imposed on the value of rental of a pickup truck or van with a gross weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles and the value of rental for a period of less than one year of an automobile pursuant to Title 36, section 1811 for the first 6 months of the

prior fiscal year after the reduction for the transfer to the Local Government Fund as described by Title 30-A, section 5681, subsection 5. Beginning on October 1, 2012 and every October 1st thereafter, the State Controller shall transfer to the Multimodal Transportation Fund an amount, as certified by the State Tax Assessor, that is equivalent to 100% of the revenue from the tax imposed on the value of rental of a pickup truck or van with a gross weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles and the value of rental for a period of less than one year of an automobile pursuant to Title 36, section 1811 for the last 6 months of the prior fiscal year after the reduction for the transfer to the Local Government Fund as described by Title 30-A, section 5681, subsection 5. The tax amount must be based on actual sales for that fiscal year and may not consider any accruals that may be required by law.

PART F

Sec. F-1. 36 MRSA §1282, as amended by PL 1991, c. 846, §13, is further amended by adding after the 5th paragraph a new paragraph to read:

A discharge of a tax lien mortgage given after the right of redemption has expired that has been recorded by the State Tax Assessor in the registry of deeds has the force and effect of a discharge given and recorded before the right of redemption has expired, unless the State has conveyed any interest based upon the title acquired from the affected lien. This paragraph applies to discharges of tax lien mortgages given after October 1, 1935.

Sec. F-2. 36 MRSA §1283, 2nd ¶, as amended by PL 1999, c. 414, §14 and PL 2011, c. 657, Pt. W, §6, is further amended to read:

~~The State Tax Assessor, whenever~~ Whenever the State acquires title to real estate under this subchapter, except real estate that is a permanent residence, as defined in section 681, the State Tax Assessor shall cause an inventory to be made of all the real estate. The inventory must contain a description of the real estate, amount of accrued taxes by years and any other information necessary in the administration and supervision of the real estate. A copy of the inventory must be furnished to the Commissioner of Agriculture, Conservation and Forestry and the Commissioner of Inland Fisheries and Wildlife prior to the convening of the Legislature. The assessor shall report annually to the Legislature not later than 15 days after it convenes. The report must contain a copy of the inventory of real estate then owned by the State and such recommendations as to the disposition of this real estate the assessor, the Commissioner of Agriculture, Conservation and Forestry and the Commissioner of Inland Fisheries and Wildlife may wish to make. Whenever the State acquires title to real estate that is a permanent residence, as defined in section 681, the State Tax Asses-

sor may cause an inventory to be made of that real estate; that inventory must comply with the requirements of this paragraph.

Sec. F-3. 36 MRSA §1283, 3rd ¶, as amended by PL 1967, c. 271, §8, is further amended to read:

The State Tax Assessor shall, after authorization by the Legislature, sell and convey any such real estate; but shall in all cases of sales, except sales to the former owners of the real estate, give public notice of the proposal to sell such real estate and shall ask for competitive bids and shall sell to the highest bidder, with the right of rejecting all bids. ~~No sales~~ Sales of such real estate or any stumpage ~~thereon shall on that~~ real estate may not be made by the State Tax Assessor except by authorization of the Legislature. Notwithstanding any provisions of this chapter to the contrary, if the State Tax Assessor has not yet conveyed such real estate, the State Tax Assessor may convey the real estate to the prior owner under the authorization of this section if the tax, interest and costs are satisfied by way of full payment, compromise or abatement.

Sec. F-4. Retroactivity. This Part applies retroactively to October 1, 1935.

PART G

Sec. G-1. 36 MRSA §191, sub-§2, ¶SS, as amended by PL 2011, c. 548, §11, is further amended to read:

SS. The disclosure of information to the Finance Authority of Maine necessary for the administration of the new markets capital investment credit in sections 2533 and 5219-HH ~~and to the Commissioner of Administrative and Financial Services as necessary for the execution of the memorandum of agreement pursuant to section 5219-HH, subsection 3;~~

Sec. G-2. 36 MRSA §5219-HH, sub-§3, as enacted by PL 2011, c. 548, §33 and affected by §35, is repealed.

PART H

Sec. H-1. 36 MRSA §1759, as amended by PL 2007, c. 627, §46, is further amended to read:

§1759. Bonds

Either as a condition for issuance or subsequent to the issuance of a registration certificate under section 1754-B, ~~1756 or 1951-B~~, the State Tax Assessor may require from a taxpayer a bond written by a surety company qualified to do business in this State, in an amount and upon conditions to be determined by the assessor. In lieu of a bond the assessor may accept a deposit of money or securities in an amount and of a kind acceptable to the assessor. The deposit must be delivered to the Treasurer of State, who shall safely keep it subject to the instructions of the assessor.

PART I

Sec. I-1. 36 MRSA §1760, sub-§41, as amended by PL 2011, c. 501, §1, is repealed.

Sec. I-2. 36 MRSA §1760, sub-§41-A is enacted to read:

41-A. Certain instrumentalities of interstate or foreign commerce. The sale of a vehicle, railroad rolling stock, aircraft or watercraft that is placed in use by the purchaser as an instrumentality of interstate or foreign commerce within 30 days after that sale and that is used by the purchaser for not less than 80% of the days in use during the next 2 years as an instrumentality of interstate or foreign commerce. The State Tax Assessor may for good cause extend for not more than 60 days the time for placing the instrumentality in use in interstate or foreign commerce.

For purposes of this subsection:

A. Property is placed in use as an instrumentality of interstate or foreign commerce by its carrying of or providing the motive power for the carrying of a bona fide payload in interstate or foreign commerce or by being dispatched to a specific location at which it will be loaded with, or will be used as motive power for the carrying of, a bona fide payload in interstate or foreign commerce.

(1) Property dispatched for the carrying of or providing the motive power for the carrying of a bona fide payload in interstate or foreign commerce is considered in use from the date of dispatch through the date the property arrives back at its principal place of business or is dispatched for the carrying of or providing the motive power for the carrying of a new bona fide payload, whichever occurs first. Any day or portion of a day in which an instrumentality is used in interstate or foreign commerce is computed as a full day of use in interstate or foreign commerce. Property dispatched for the carrying of or providing the motive power for the carrying of a bona fide payload in intrastate commerce is considered in use from the date of dispatch through the date the property arrives back at its principal place of business or is dispatched for the carrying of or providing the motive power for the carrying of a new bona fide payload, whichever occurs first. For purposes of this subparagraph, use of a trailer, semitrailer or tow dolly, as defined in Title 29-A, section 101, pursuant to a written interchange agreement as described in 49 Code of Federal Regulations, Section 376.31, or successor regulation, between the purchaser and an authorized motor carrier is considered use by the purchaser.

(2) Personal property is not in use as an instrumentality of interstate or foreign commerce when carrying a bona fide payload that both originates and terminates within the State, unless the personal property is a bus with a capacity of at least 47 passengers that is engaged in transporting within the State a bona fide payload of travelers on an interstate or foreign cruise that originates outside the State and terminates outside the State and the transportation is provided pursuant to a contract between the interstate or foreign cruise provider and the person providing the transportation.

(3) Any day in which an instrumentality is not used in intrastate commerce or interstate or foreign commerce, including while being repaired or maintained, is not counted in the 80% computation; and

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

(1) "Bona fide payload" means a cargo of persons or property transported by a contract carrier or common carrier for compensation that exceeds the direct cost of carrying that cargo or pursuant to a legal obligation to provide service as a public utility or a cargo of property transported in the reasonable conduct of the purchaser's own nontransportation business in interstate or foreign commerce.

(2) "Dispatch" means to send to a destination for the purpose of interstate or foreign commerce or for the purpose of intrastate commerce.

The exemption provided by this subsection is not limited to instrumentalities otherwise required to be exempt under the United States Constitution.

Sec. I-3. Retroactivity. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Part applies to purchases made on or after January 1, 2012.

See title page for effective date.

**CHAPTER 376
H.P. 1254 - L.D. 1808**

**An Act To Implement
Recommendations Resulting
from a State Government
Evaluation Act Review of the
Department of Environmental
Protection by the Joint
Standing Committee on
Environment and Natural
Resources**

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

Sec. 1. 38 MRSA §349, sub-§2-A, as enacted
by PL 1997, c. 570, §1, is amended to read:

2-A. Supplemental environmental projects. In
settling a civil enforcement action for any violation of
any of the provisions of the laws administered by the
department, including, without limitation, a violation
of the terms or conditions of any order, rule, license,
permit, approval or decision of the board or commis-
sioner, the parties may agree to a supplemental envi-
ronmental project that mitigates ~~not more than 80% up~~
to 100% of the assessed penalty. "Supplemental envi-
ronmental project" means an environmentally benefi-
cial project primarily benefiting public health or the
environment that a violator is not otherwise required
or likely to perform.

A. An eligible supplemental environmental proj-
ect is limited to the following categories:

- (1) Pollution prevention projects that elimi-
nate all or a significant portion of pollutants
at the point of generation;
- (2) Pollution reduction projects that signifi-
cantly decrease the release of pollutants into a
waste stream at the point of discharge to a
point significantly beyond levels required for
compliance;
- (3) Environmental enhancement projects in
the same ecosystem or geographic area of the
violation that significantly improve an area
beyond what is required to remediate any
damage caused by the violation that is the
subject of the enforcement action;
- (4) Environmental awareness projects sub-
stantially related to the violation that provide
training, publications or technical support to
members of the public regulated by the de-
partment;
- (5) Scientific research and data collection
projects that advance the scientific basis on
which regulatory decisions are made;

(6) Emergency planning and preparedness
projects that assist state or local emergency
response and planning entities in preparing or
responding to emergencies; and

(7) Public health projects that provide a di-
rect and measurable benefit to public health.

B. Supplemental environmental projects may not
be used for the following situations:

~~(1) Repeat violations of the same or a sub-
stantially similar law administered by the de-
partment by the same person;~~

(2) When a project is required by law;

(3) If the violator had previously planned and
budgeted for the project;

(4) To offset any calculable economic benefit
of noncompliance;

(5) If the violation is the result of reckless or
intentional conduct; or

(6) If the project primarily benefits the viola-
tor.

Any settlement that includes a supplemental envi-
ronmental project must provide that expenditures
are not tax deductible and are ineligible for certi-
fication as tax exempt pollution control facilities
pursuant to Title 36, chapters 105 and 211.

Sec. 2. 38 MRSA §2124-A, first ¶, as
amended by PL 2011, c. 655, Pt. GG, §31 and affected
by §70, is further amended to read:

By January 1, ~~2013~~ 2020 and ~~annually~~ biennially
thereafter, the department shall submit a report to the
joint standing committee of the Legislature having
jurisdiction over environmental and natural resources
matters and the Governor setting forth information on
statewide generation of solid waste, statewide recy-
cling rates and available disposal capacity for solid
waste.

See title page for effective date.

**CHAPTER 377
H.P. 1239 - L.D. 1795**

**An Act To Amend the Maine
Criminal Code and Related
Statutes as Recommended by
the Criminal Law Advisory
Commission**

Emergency preamble. Whereas, acts and re-
solves of the Legislature do not become effective until
90 days after adjournment unless enacted as emergen-
cies; and

Whereas, laws were enacted by the 128th Legislature that inadvertently omitted a cross-reference to the Maine Rules of Evidence in the law on service of process on foreign entities that are providers of electronic communication service and providers of remote computing service; repealed the option of prosecuting possession of up to 2 1/2 ounces of marijuana by persons under 18 years of age as a civil violation; and neglected to amend the Sex Offender Registration and Notification Act of 2013 to include a registration obligation for the new crime of gross sexual assault based on lack of acquiescence; and

Whereas, timely correction of these errors and omissions is necessary to the proper administration of the criminal laws; 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. 15 MRSA §56, sub-§2, ¶C, as enacted by PL 2017, c. 144, §3, is amended to read:

C. A foreign entity provider shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(11) if the foreign entity that is the provider of services is governed by the laws of another state and that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(12) if the foreign entity that is the provider of services is governed by the laws of a foreign country. Admissibility of these records in a court in this State is governed by the Maine Rules of Evidence, Rule 803(6).

Sec. 2. 15 MRSA §3314, sub-§1, ¶G, as amended by PL 2009, c. 93, §12, is further amended to read:

G. Except for a violation of section 3103, subsection 1, paragraph H, the court may impose a fine, subject to Title 17-A, sections 1301 to 1304, except that there is no mandatory minimum fine amount. For the purpose of this section, juvenile offenses defined in section 3103, subsection 1, paragraphs B and C are ~~deemed Class E crimes~~ subject to a fine of up to \$1,000.

Sec. 3. 22 MRSA §2383, sub-§1-A, as enacted by PL 2017, c. 1, §20, is amended to read:

1-A. Marijuana possession by a person under 21 years of age. Except for possession of marijuana for medical use pursuant to chapter 558-C, a person who is under 21 years of age may not possess mari-

juana. A person who is ~~18, 19 or 20~~ under 21 years of age who possesses a usable amount of marijuana commits a civil violation for which a fine of not less than \$350 and not more than \$600 must be adjudged for possession of up to 1 1/4 ounces of marijuana and a fine of not less than \$700 and not more than \$1,000 must be adjudged for possession of over 1 1/4 ounces to 2 1/2 ounces of marijuana, none of which may be suspended. For the purposes of this section, marijuana has the same meaning as in Title 17-A, section 1101, subsection 1.

Sec. 4. 34-A MRSA §11273, sub-§15, ¶A, as amended by PL 2017, c. 65, §2, is further amended to read:

A. Title 17-A, chapter 11 including the following:

(1) Title 17-A, section 253, subsection 2, paragraph J, regardless of the age of the victim;

(1-A) Title 17-A, section 253, subsection 2, paragraph F, regardless of the age of the victim if the crime is committed on or after October 1, 2017;

(2) Title 17-A, section 253, subsection 2, paragraph K, regardless of the age of the victim;

(3) Title 17-A, section 253, subsection 2, paragraph L, regardless of the age of the victim;

(3-A) Title 17-A, section 253, subsection 2, paragraph M, regardless of the age of the victim, if the crime is committed on or after the effective date of this subparagraph;

(4) Title 17-A, section 255-A, subsection 1, paragraph J, regardless of the age of the victim;

(4-A) Title 17-A, section 255-A, subsection 1, paragraph L, regardless of the age of the victim if the crime is committed on or after October 1, 2017;

(5) Title 17-A, section 255-A, subsection 1, paragraph R-1, regardless of the age of the victim;

(6) Title 17-A, section 255-A, subsection 1, paragraph R-2, regardless of the age of the victim; and

(7) Title 17-A, section 258, subsection 1-A, if the victim had not attained 12 years of age;

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

Effective April 11, 2018.

**CHAPTER 378
H.P. 132 - L.D. 176**

**An Act To Authorize the
Maine Public Employees
Retirement System To Procure
and Offer Long-term Disability
Insurance**

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

Sec. 1. 5 MRSA c. 423, sub-c. 7 is enacted to read:

SUBCHAPTER 7

LONG-TERM DISABILITY INSURANCE

**§18101. Long-term disability insurance coverage
authorized**

The board may offer long-term disability insurance coverage to members through their employer and may contract with one or more insurance companies to provide this coverage.

1. Premiums. All premiums and any other amounts due to an insurance company or other 3rd party in connection with coverage under this subchapter must be borne by the covered person, the covered person's employer or both the covered person and the covered person's employer.

2. Rules. The board may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules pursuant to chapter 375, subchapter 2-A.

Sec. 2. 5 MRSA c. 425, sub-c. 7 is enacted to read:

SUBCHAPTER 7

LONG-TERM DISABILITY INSURANCE

**§18701. Long-term disability insurance coverage
authorized**

The board may offer long-term disability insurance coverage to members and employees who choose not to become members but participate in the defined contribution plan pursuant to section 18801, subsection 1 through their employer and may contract with one or more insurance companies to provide this coverage.

1. Premiums. All premiums and any other amounts due to an insurance company or other 3rd

party in connection with coverage under this subchapter must be borne by the covered person, the covered person's employer or both the covered person and the covered person's employer.

2. Rules. The board may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules pursuant to chapter 375, subchapter 2-A.

Sec. 3. Report. The Maine Public Employees Retirement System shall report twice to the joint standing committee of the Legislature having jurisdiction over retirement matters, no later than January 31, 2019 and January 31, 2020, on the use of the authority granted to the Board of Trustees of the Maine Public Employees Retirement System pursuant to the Maine Revised Statutes, Title 5, chapter 423, subchapter 7 and Title 5, chapter 425, subchapter 7, including the results of any offering of long-term disability insurance by the board.

See title page for effective date.

**CHAPTER 379
H.P. 446 - L.D. 630**

**An Act To Prohibit Third
Parties from Facilitating
Transfers of Moose Permits for
Consideration**

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

Sec. 1. 12 MRSA §11110, as repealed and replaced by PL 2015, c. 301, §14, is amended to read:

§11110. Transfer of hunting areas or zones

1. Transfer permitted. A person who has been assigned a designated hunting area, zone or season by the department for purposes of hunting a game animal may exchange that designated zone, area or season with another person assigned a different hunting zone, area or season for the same game animal for purposes of hunting that same game animal. The department may assist in the exchange to ensure that the permit holders meet the requirements of section 10756, but the State bears no responsibility for enforcing the terms of the exchange between the permit holders. The commissioner may adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

~~**2. Transfer of moose permit for consideration prohibited.** Notwithstanding subsection 1, the holder of a moose permit who has been assigned a designated hunting area, zone or season by the department may not exchange that designated zone, area or season with~~

~~another person assigned a different hunting zone, area or season for any consideration other than the other person's different hunting zone, area or season. A person who violates this subsection commits a Class D crime.~~

3. Facilitating for consideration transfer of a moose permit prohibited. A person may not facilitate for consideration the exchange of moose permits between holders of moose permits who are exchanging those permits pursuant to subsection 1. For purposes of this subsection, "facilitate for consideration" means to directly receive compensation or something of value solely as part of an exchange of moose permits. A person who violates this subsection commits a Class E crime.

See title page for effective date.

CHAPTER 380

H.P. 1150 - L.D. 1665

An Act To Maintain Mental Health Staffing at the Dorothea Dix Psychiatric Center and Support Statewide Forensic Services

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

Sec. 1. Appropriations and allocations. The following appropriations and allocations are made.

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF**

Dorothea Dix Psychiatric Center Z222

Initiative: Makes permanent 6 limited-period Mental Health Worker I positions and transfers funds from All Other to Personal Services.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	6.000
Personal Services	\$0	\$145,879
All Other	\$0	(\$145,879)
GENERAL FUND TOTAL	\$0	\$0

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
Personal Services	\$0	\$259,340
All Other	\$0	(\$259,340)

OTHER SPECIAL	\$0	\$0
REVENUE FUNDS TOTAL		

See title page for effective date.

CHAPTER 381

H.P. 1271 - L.D. 1829

An Act To Amend the Laws Governing Education

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

Sec. 1. 20-A MRSA §257, sub-§1, ¶A, as repealed and replaced by PL 1991, c. 662, §1, is amended to read:

A. Is at least ~~18~~ 17 years of age, ~~if that person and:~~

~~(1) Has completed a formal training program approved by the commissioner; and~~

(2) Has demonstrated, through procedures prescribed by the commissioner, attainment of a general educational development comparable to that of a secondary school graduate; ~~or.~~

Sec. 2. 20-A MRSA §257, sub-§1, ¶B, as repealed and replaced by PL 1991, c. 662, §1, is repealed.

Sec. 3. 20-A MRSA §5201, sub-§3, ¶F, as amended by PL 2003, c. 688, Pt. B, §4, is further amended to read:

F. A person who obtains a waiver from the commissioner pursuant to section 5206 may enroll as a public secondary school student.

This paragraph is repealed July 1, 2020.

Sec. 4. 20-A MRSA §5206, as enacted by PL 2003, c. 116, §2, is amended to read:

§5206. Waiver

The superintendent may request that the commissioner approve on a case-by-case basis waivers of the age requirements under section 5201 to allow a student who has reached 20 years of age before the start of the school year to be enrolled as a public secondary school student. The commissioner may grant a waiver upon finding that there are unforeseeable circumstances or undue hardship and that the request that the school administrative unit has submitted is reasonable. The application for a waiver must contain:

1. Documentation. Documentation of actions taken to meet the requirements prior to applying for the waiver;

2. Description. A description of the unforeseeable circumstances or undue hardship, including financial hardship, that led to the application; and

3. Statement. A statement explaining how the waiver requested will not create learning inequities for the students enrolled in the schools in the school administrative unit.

This section is repealed July 1, 2020.

Sec. 5. 20-A MRSA §6301, sub-§1, as repealed and replaced by PL 1989, c. 414, §9, is amended to read:

1. Duty of teacher. A teacher who has reason to believe that a student is a public health threat as a result of ~~being infested with parasites, or having a communicable disease of the skin, mouth or eyes;~~ shall inform the superintendent.

Sec. 6. 20-A MRSA §6301, sub-§2, as amended by PL 1989, c. 414, §10, is further amended to read:

2. Duty of superintendent. A superintendent informed by a teacher under subsection 1 may:

A. Inform the student's parent:

(1) To cleanse the clothing and bodies of ~~their children~~ the student; and

(2) To furnish ~~their children~~ the student with the required home or medical treatment for the relief of ~~their~~ the student's trouble so defined in subsection 1;

B. Exclude the student from the public schools until the student is no longer a public health threat; ~~and~~

C. Exclude the student from public school as soon as safe and proper transportation home is available; ~~and~~

D. Consult with the school nurse.

Sec. 7. 20-A MRSA §6301, sub-§3, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

3. Duty of parent. A parent informed by a superintendent under subsection 2 shall promptly do what is reasonably necessary to ensure that the student is ~~no longer offensive or dangerous~~ not a public health threat.

Sec. 8. 20-A MRSA §6451, as enacted by PL 1981, c. 693, §§5 and 8 and amended by PL 2003, c. 689, Pt. B, §7, is further amended to read:

§6451. Hearing and sight screening

1. Student right to screening for sight and hearing defects. Each student ~~shall~~ must be screened periodically to determine whether ~~they have~~ the student has sight or hearing defects.

2. Commissioner's duties. The commissioner shall:

A. After consultation with the Commissioner of Health and Human Services ~~and in collaboration with the school nurse consultant as described in section 6401-A,~~ adopt rules and provide school administrative units with ~~assistance and materials~~ a copy of these rules and guidance to carry out this subsection; ~~and~~

~~B. Furnish to the administrators of the school administrative units the prescribed directions for the tests of sight and hearing; and~~

C. ~~Furnish test cards, record and report forms and other useful materials~~ guidance, training and sample report and referral forms that may be helpful for carrying out the purpose of this section.

3. Exempt students. A student whose parent objects in writing to screening ~~or religious grounds shall~~ may not be screened unless a sight or hearing defect is reasonably apparent.

Sec. 9. 20-A MRSA §6453, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

§6453. Notice to parents of result of screening

The school board shall appoint appropriate school staff to inform the parent of a student suffering from a suspected disease or defect based on the screening results.

Sec. 10. 20-A MRSA §6455, as enacted by PL 2009, c. 407, §1, is repealed.

Sec. 11. 20-A MRSA §8601-A, sub-§1, as amended by PL 2013, c. 167, Pt. C, §1, is further amended to read:

1. Adult education. "Adult education" means an education program primarily operated for individuals beyond the compulsory school age that is administered by school administrative units through a career pathways and service system and that, except as provided in section 8602-B, includes intake, assessment, advising, instruction and individual learning plans; is guided by data management and analysis, annual monitoring and annual professional development plans; uses appropriately certified staff; is designed to meet identified local needs; makes use of partnerships and alignment with workforce development, postsecondary institutions and support services; and offers at least 3 of the following:

A. Basic literacy instruction or instruction in English as a Second Language;

- B. High school completion courses;
- C. College transition courses;
- ~~E. Enrichment courses;~~
- F. Adult workforce training and retraining; and
- G. Adult career and technical education.

"Adult education" also includes enrichment courses offered as part of a school administrative unit's adult education program in accordance with section 8613.

Sec. 12. 20-A MRSA §8606-A, sub-§2, as amended by PL 2011, c. 517, §7, is further amended to read:

2. Budget recommendation. Prior to ~~December 15th~~ February 1st of each year, the commissioner shall ~~certify to the Governor and to the Bureau of the Budget~~ notify each school board of the estimated amount of the funding levels to be allocated to the school administrative unit for the various program categories in adult education for payment in the next fiscal year. The commissioner shall include these funding levels in the department's request to the Legislature for appropriations from the General Fund to carry out the purposes of this chapter.

A. The recommended funding level must include funds in an amount that is sufficient to provide for state administration of adult education programs including funds for the cost of ~~general educational development~~ high school equivalency tests and administration; supporting volunteer literacy programs; state-sponsored professional development; state-level data collection, including the required software for units, regions or centers providing adult education programs; and reimbursement of the costs listed in section 8607-A at the rates established in that section. The recommended funding level may not exceed the maximum allowable expenditures in the base year, adjusted pursuant to paragraph C.

B. A unit, region or center shall provide the commissioner with information requested by the commissioner to carry out the purpose of this chapter. The commissioner may withhold state subsidy payment or a portion of the state subsidy payment from a unit, region or center if the unit, region or center does not provide requested information to the commissioner in compliance with the specified format, content and time schedule established by the commissioner.

C. The recommendation ~~in the commissioner's funding level certification~~ must include local adult education program cost adjustment to the equivalent of the year prior to the year of allocation. This adjustment is calculated according to the same guidelines established, for purposes of chapter 606-B, by section 15689-C, subsection 3.

Sec. 13. 20-A MRSA §8613 is enacted to read:

§8613. Enrichment courses

Notwithstanding any other provision of this chapter, a school administrative unit may offer enrichment courses as part of its adult education program as long as the school administrative unit tracks and reports annually to the department the number of enrichment courses offered and the total student enrollment in those courses. A school administrative unit is not required to undertake student intake, assessment, advising, instruction and individual learning plans for enrichment courses.

Sec. 14. 20-A MRSA §13012-A, sub-§4, as enacted by PL 2017, c. 235, §11 and affected by §41, is amended to read:

4. Requirements. If a school administrative unit employs a conditionally certified teacher ~~or educational specialist~~, the school administrative unit shall for at least the first year of employment or longer if determined to be necessary:

- A. Ensure that the conditionally certified teacher ~~or educational specialist~~ receives high-quality professional development that is sustained, intensive and classroom-focused in order to have a positive and lasting impact on classroom instruction while teaching; and
- B. Provide a program of intensive supervision for the conditionally certified teacher ~~or educational specialist~~ that consists of structured guidance and regular ongoing support or a mentoring program, which is separate from any student-teacher requirement that may be required under another authority.

Sec. 15. 20-A MRSA §13013, sub-§2-B, ~~¶C,~~ as enacted by PL 2017, c. 235, §12 and affected by §41, is amended to read:

- C. Has successfully completed a preparation program in a state with which the State is participating in an interstate compact, subject to the following:
 - (1) Completion of an approved preparation program for the endorsement or certificate being sought with a formal recommendation for certification from the institution; ~~or and~~
 - (2) In the 5 years prior to applying for certification in this State, the applicant has 3 years of successful teaching experience under a valid comparable certificate in a state with which the State is participating in the interstate compact.

If advanced study or tests are required in the State, the commissioner has the right, as specified

in the interstate compact, to issue only a conditional certificate under section 13012-A; or

Sec. 16. 20-A MRSA §15672, sub-§23, as amended by PL 2017, c. 284, Pt. C, §§27 and 28, is further amended to read:

23. Property fiscal capacity. "Property fiscal capacity" means:

A. Prior to fiscal year 2014-15, the certified state valuation for the year prior to the most recently certified state valuation;

B. For fiscal year 2014-15, the average of the certified state valuations for the 2 most recent years prior to the most recently certified state valuation;

C. For fiscal years 2015-16, 2016-17 and 2017-18, the average of the certified state valuations for the 3 most recent years prior to the most recently certified state valuation; ~~and~~

D. For fiscal year 2018-19 ~~and each subsequent fiscal year~~, the average of the certified state valuations for the 2 most recent years prior to the most recently certified state valuation; ~~and~~

E. For fiscal year 2019-20 and each subsequent fiscal year, the average of the certified state valuations for the 3 most recent years prior to the most recently certified state valuation or the certified state valuation for the most recent prior year, whichever is lower.

Sec. 17. 20-A MRSA c. 802, as amended, is repealed.

Sec. 18. Provide copy of confidential version of report. Notwithstanding the Maine Revised Statutes, Title 1, section 402, subsection 3, paragraph L, the Department of Education may provide a copy of the confidential version of the report, "School Safety, Security and Emergency Management Assessment," prepared by Safe Havens International Inc. dated March 17, 2014 to the Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency.

See title page for effective date.

CHAPTER 382

S.P. 718 - L.D. 1875

An Act To Amend the Maine Life and Health Insurance Guaranty Association Act

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

Sec. 1. 24-A MRSA §4386, sub-§1, as enacted by PL 1981, c. 347, is amended to read:

1. Insolvency; assets disbursed. Within 120 days ~~of~~ after a final determination of insolvency of a company by a court of competent jurisdiction of this State, the receiver shall make application to the court for approval of a proposal to disburse assets out of the company's marshaled assets, from time to time as those assets become available, to the Maine Insurance Guaranty Association, to the Maine Life and Health Insurance Guaranty Association and to any similar organization in another state. The Maine Insurance Guaranty Association, the Maine Life and Health Insurance Guaranty Association and any similar organizations in other states ~~shall be~~ are referred to, collectively, as the associations.

Sec. 2. 24-A MRSA §4603, sub-§1, as amended by PL 2005, c. 346, §2 and affected by §16, is further amended to read:

1. Application. This chapter applies to direct nongroup life insurance policies, health insurance policies, annuity contracts and contracts supplemental to life and health insurance policies and annuity contracts and to certificates under direct group life insurance policies, health insurance policies and annuity contracts, except as limited by this chapter. For the purposes of this chapter, ~~annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities and any immediate or deferred annuity contracts;~~

A. Health insurance policies include individual and group health maintenance organization enrollment contracts, and health maintenance organizations are considered to be health insurers;

B. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities and any immediate or deferred annuity contracts; and

C. Benefits provided by a long-term care rider to a life insurance policy or annuity contract are considered the same type of benefits as the base life insurance policy or annuity contract to which the rider relates.

Sec. 3. 24-A MRSA §4603, sub-§1-A, as amended by PL 2005, c. 346, §2 and affected by §16, is further amended to read:

1-A. Persons covered. This chapter provides coverage for the policies and contracts specified in subsection 1:

A. To any person, regardless of where the person resides, except for a nonresident certificate holder under a group policy or contract, who is the beneficiary, assignee or payee, including a health care provider rendering services covered under a health insurance policy or certificate, of a person covered under paragraph B;

B. To any person who owns, or is a certificate holder or enrollee under, a policy or contract specified in subsection 1, other than a structured settlement annuity, who:

- (1) Is a resident; or
- (2) Is not a resident, if all the following conditions are met:
 - (a) The insurer that issued the policy or contract is domiciled in this State;
 - (b) The insurer never held a license or certificate of authority in the state in which the person resides;
 - (c) The state in which the person resides has an association similar to the Maine Life and Health Insurance Guaranty Association; and
 - (d) The person is not eligible for coverage by the association in that state; and

C. To any person who is a payee under a structured settlement annuity, or to a beneficiary or beneficiaries of a payee if the payee is deceased, if the payee:

- (1) Is a resident, regardless of where the contract owner resides; or
- (2) Is not a resident, if all of the conditions of either division (a) or (b) are met:
 - (a) The contract owner of the structured settlement annuity is a resident; or
 - (b) The contract owner of the structured settlement annuity is not a resident, but:
 - (i) The insurer that issued the structured settlement annuity is domiciled in this State;
 - (ii) The state in which the contract owner resides has an association similar to the association created by this chapter; and
 - (iii) The payee or beneficiary and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

This chapter does not provide coverage to a person who is a payee or beneficiary of a contract owner who is a resident of this State if the payee or beneficiary is afforded any coverage by a similar association of another state.

This chapter is intended to provide coverage to a person who is a resident, and, in special circumstances as provided by this section, to a person who is not a resident. In order to avoid duplicate coverage, if a person

who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, that person may not be provided coverage under this chapter. In determining the application of the provisions of this subsection in a situation in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, enrollee or assignee, this chapter must be construed in conjunction with other state laws to result in coverage by only one association.

Sec. 4. 24-A MRSA §4603, sub-§2, ¶E, as amended by PL 2005, c. 346, §2 and affected by §16, is further amended to read:

E. Any With the exception of a policy or contract or portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits, any portion of a policy or contract to the extent that the rate of interest on which it is based, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

- (1) Averaged over a period of 4 years before the date on which the member insurer becomes an impaired insurer or becomes an insolvent insurer under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged over the same 4-year period or for a lesser period if the policy or contract was issued less than 4 years before the member insurer becomes an impaired insurer or becomes an insolvent insurer, whichever is earlier; and
- (2) On or after the date on which the member insurer becomes an impaired insurer or becomes an insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's Corporate Bond Yield Average as most recently available;

Sec. 5. 24-A MRSA §4603, sub-§2, ¶J, as enacted by PL 2005, c. 346, §2 and affected by §16, is amended to read:

J. Any obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner ~~or~~ policy owner, enrollee or certificate holder, including without limitation:

- (1) Claims based on marketing materials;
- (2) Claims based on side letters, riders or other documents that were issued by the insurer without meeting applicable ~~policy~~ form filing or approval requirements;

- (3) Misrepresentations of or regarding policy or contract benefits;
- (4) Extra-contractual claims; or
- (5) Claims for penalties or consequential or incidental damages;

Sec. 6. 24-A MRSA §4603, sub-§2, ¶L, as amended by PL 2009, c. 118, §1 and affected by §5, is further amended to read:

L. Any unallocated annuity contract, except any annuity, whether allocated or unallocated, issued to a governmental retirement benefit plan established under the United States Internal Revenue Code, 26 United States Code, Section 401, 403(b) or 457; ~~and~~

Sec. 7. 24-A MRSA §4603, sub-§2, ¶M, as enacted by PL 2005, c. 346, §2 and affected by §16, is amended to read:

M. Any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired insurer or becomes an insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this paragraph, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture; ~~and~~

Sec. 8. 24-A MRSA §4603, sub-§2, ¶N is enacted to read:

N. Any policy or contract providing hospital, medical, prescription drug or other health care benefits pursuant to 42 United States Code, Chapter 7, Subchapter XVIII, Part C or D (2018), also known as Medicare Part C or D, or pursuant to 42 United States Code, Chapter 7, Subchapter XIX (2018), also known as Medicaid, or any regulations issued pursuant thereto.

Sec. 9. 24-A MRSA §4603, sub-§3, ¶A, as enacted by PL 2005, c. 346, §2 and affected by §16, is amended to read:

A. The contractual obligations for which the member insurer is liable or would have been li-

able if it were not an impaired or insolvent insurer;

Sec. 10. 24-A MRSA §4603, sub-§3, ¶B, as repealed and replaced by PL 2009, c. 652, Pt. A, §34, is amended to read:

B. With respect to one life, regardless of the number of policies or contracts:

- (1) Three hundred thousand dollars in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;
- (2) The following limits for health insurance benefits:

(a) Three hundred thousand dollars for coverages not defined as disability income insurance, long-term care insurance or basic hospital, medical and surgical insurance or major medical insurance health plans as defined in section 4301-A, subsection 7, including any net cash surrender and net cash withdrawal values;

(b) Three hundred thousand dollars for disability income and long-term care insurance; or

(c) Five hundred thousand dollars for basic hospital, medical and surgical insurance or major medical insurance health plans as defined in section 4301-A, subsection 7; or

(3) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

Sec. 11. 24-A MRSA §4603, sub-§4, ¶A, as enacted by PL 2005, c. 346, §2 and affected by §16, is amended to read:

A. An aggregate of \$300,000 in benefits with respect to any one life under subsection 3, paragraph B except with respect to benefits for basic hospital, medical and surgical insurance and major medical insurance health plans under subsection 3, paragraph B, subparagraph (2), in which case the aggregate liability of the association may not exceed \$500,000 with respect to any one individual; or

Sec. 12. 24-A MRSA §4603, sub-§6, as enacted by PL 2005, c. 346, §2 and affected by §16, is amended to read:

6. Material economic benefits; contractual obligations. In performing its obligations to provide coverage under section 4608, the association is not required to guarantee, assume, reinsure, reissue or

perform, or cause to be guaranteed, assumed, reinsured, reissued or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

Sec. 13. 24-A MRSA §4605-A, sub-§§8, 12 and 14, as enacted by PL 2005, c. 346, §5 and affected by §16, are amended to read:

8. Covered policy or covered policy or contract. "Covered policy" or "covered policy or contract" means a policy or contract or portion of a policy or contract for which coverage is provided under section 4603.

12. Member insurer. "Member insurer" means an insurer or health maintenance organization that is licensed or that holds a certificate of authority to transact in this State any kind of insurance, annuity or health maintenance organization business for which coverage is provided under section 4603 and includes an insurer or health maintenance organization whose license or certificate of authority in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

- A. A hospital or medical service organization, whether profit or nonprofit;
- ~~B. A health maintenance organization;~~
- C. A fraternal benefit society;
- D. A mandatory state pooling plan;
- E. A mutual assessment company or other person that operates on an assessment basis;
- F. An insurance exchange;
- G. An organization that has a certificate or license limited to the issuance of charitable gift annuities under this Title; or
- H. An entity similar to any of those listed in this subsection.

14. Owner. "Owner" with respect to a policy or contract and "policyholder," "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. "Owner," "policyholder," "contract owner" and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

Sec. 14. 24-A MRSA §4606, sub-§1, as amended by PL 2005, c. 346, §6 and affected by §16, is further amended to read:

1. Creation. There is created a nonprofit legal entity to be known as the Maine Life and Health Insurance Guaranty Association. All member insurers must be and remain members of the association as a condition of their authority to transact insurance or health maintenance organization business in this State. The association shall perform its functions under the plan of operation established and approved under section 4610 and shall exercise its powers through a board of directors established under section 4607. For purposes of administration and assessment, the association shall maintain 3 accounts:

- A. The health insurance account;
- B. The life insurance account; and
- C. The annuity account, which must include annuity contracts owned by a governmental retirement plan or its trustee established under Section 401, Section 403(b) or Section 457 of the United States Internal Revenue Code.

Sec. 15. 24-A MRSA §4607, sub-§1, as amended by PL 2005, c. 346, §6 and affected by §16, is further amended to read:

1. Membership. The board of directors of the association must consist of not less than 5 7 nor more than 9 11 members representing member insurers serving terms as established in the plan of operation pursuant to section 4610. The members of the board are selected by member insurers subject to the approval of the superintendent. Vacancies on the board must be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors and initially organize the association, the superintendent shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer is entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the superintendent may appoint the initial members.

Sec. 16. 24-A MRSA §4608, sub-§1, ¶A, as amended by PL 2005, c. 346, §6 and affected by §16, is further amended to read:

- A. Guarantee, assume, reissue or reinsure, or cause to be guaranteed, assumed, reissued or reinsured all the covered policies of the impaired insurer; or

Sec. 17. 24-A MRSA §4608, sub-§3-A, ¶¶A and B, as enacted by PL 2005, c. 346, §6 and affected by §16, are amended to read:

- A. Take the following actions:
 - (1) Guarantee, assume, reissue or reinsure or cause to be guaranteed, assumed, reissued or reinsured the policies or contracts of the in-

solvent insurer, or assure payment of the contractual obligations of the insolvent insurer; and

(2) Provide money, pledges, loans, notes, guarantees or other means reasonably necessary to discharge the association's duties; or

B. Provide benefits and coverages in accordance with this paragraph.

(1) With respect to life and health insurance policies and annuities, the association shall assure payment of benefits for ~~premiums identical to the premiums and benefits, except for terms of conversion and renewability,~~ that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(a) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies and contracts; and

(b) With respect to nongroup policies, contracts and annuities, not later than the earlier of the next renewal date if any under the policies or contracts and one year, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies or contracts.

(2) The association shall make diligent efforts to provide all known insureds, enrollees or annuitants for nongroup policies and contracts, or group policy or contract owners with respect to group policies and contracts, 30 days' notice of the termination of the benefits provided.

(3) With respect to nongroup life and health insurance policies and annuities covered by the association, the association shall make available to each known insured, enrollee or annuitant, or owner if other than the insured, enrollee or annuitant, and, with respect to an individual formerly insured, formerly enrolled or formerly an annuitant under a group policy or contract who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subparagraph (4), if the insureds, enrollees or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the in-

surer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(4) In providing substitute coverage, the association may offer either to reissue the terminated coverage or to issue an alternative policy in accordance with the following:

(a) Alternative or reissued policies must be offered without requiring evidence of insurability and may not provide for any waiting period or exclusion that would not have applied under the terminated policy;

(b) The association may reinsure any alternative or reissued policy;

(c) Alternative policies adopted by the association and any amendments to reissued policies are subject to the approval of the superintendent ~~and the receivership court~~. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency;

(d) Alternative policies must contain at least the minimum statutory provisions required in this State and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a an actuarially justified table of rates that it adopts, subject to prior approval of the superintendent. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten; and

(e) Any alternative policy issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(5) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium must be actuarially justified and set by the association in accordance with the amount of insurance coverage provided and the age and class of risk, subject to approval of the superintendent ~~and the receivership court~~.

(6) The association's obligations with respect to coverage under any policy of the impaired

or insolvent insurer or under any reissued or alternative policy must cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured, the enrollee or the association.

(7) When proceeding under this paragraph with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 4603.

(8) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this chapter with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value that may be due in accordance with the provisions of this chapter.

(9) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(10) The protection provided by this chapter does not apply when any guaranty protection is provided to residents of this State by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this State.

Sec. 18. 24-A MRSA §4608, sub-§6-B, as enacted by PL 2005, c. 346, §6 and affected by §16, is amended to read:

6-B. Retention of deposit; final order of liquidation or rehabilitation plan. A deposit in this State, held pursuant to law or required by the superintendent for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of ~~an~~ a member insurer domiciled in this State or in a reciprocal state, pursuant to this Title must be promptly paid to the association. The association is entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this State related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association and not retained pursuant to this subsection. Any amount so paid to the association less the amount not retained

by it must be treated as a distribution of estate assets pursuant to chapter 57 or similar provision of the state of domicile of the impaired or insolvent insurer.

Sec. 19. 24-A MRSA §4608, sub-§§8 and 9, as amended by PL 2005, c. 346, §6 and affected by §16, are further amended to read:

8. Standing to appear before court. The association has standing to appear or intervene before any court or agency in this State with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise. This standing extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, reissuing, modifying or guaranteeing the covered policies or contracts and contractual obligations of the impaired or insolvent insurer and the determination of the covered policies or contracts and contractual obligations. The association also has the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

9. Subrogation rights. Any person receiving benefits under this chapter is deemed to have assigned that person's rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of these rights and cause of action by any payee, policy or contract owner, beneficiary, insured, enrollee or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon that person. The association is subrogated to these rights against the assets of any impaired or insolvent insurer.

The subrogation rights of the association under this subsection must have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

In addition, the association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, insured, enrollee or payee of a policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary or payee of the annuity, to the

extent of benefits received pursuant to this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under Section 130 of the federal Internal Revenue Code.

If the provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations must be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion thereof covered by the association.

If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in this subsection, the person shall pay to the association the portion of the recovery attributable to the policies or portion thereof covered by the association.

Sec. 20. 24-A MRSA §4608, sub-§11, ¶¶C and G, as amended by PL 2005, c. 346, §6 and affected by §16, are further amended to read:

C. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association not in default are legal investments for domestic member insurers and may be carried as admitted assets;

G. Exercise, for the purposes of this chapter and to the extent approved by the superintendent, the powers of a domestic life or health insurer or health maintenance organization, but in no case may the association issue ~~insurance~~ policies or ~~annuity~~ contracts other than those issued to perform the contractual obligations of the impaired insurer;

Sec. 21. 24-A MRSA §4608, sub-§11, ¶J, as enacted by PL 2005, c. 346, §6 and affected by §16, is amended to read:

J. Join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association; ~~and~~

Sec. 22. 24-A MRSA §4608, sub-§11, ¶J-1 is enacted to read:

J-1. In accordance with the terms and conditions of the policy or contract, if not otherwise prohibited by applicable law, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this chapter; and

Sec. 23. 24-A MRSA §4608, sub-§12, ¶G, as enacted by PL 2005, c. 346, §6 and affected by §16, is amended to read:

G. Except as otherwise expressly provided, this subsection does not alter or modify the terms and conditions of the indemnity reinsurance agreements of an insolvent insurer. This subsection may not be construed to abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. This subsection may not be construed to give a policy owner, contract owner, enrollee, certificate holder or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

Sec. 24. 24-A MRSA §4608, sub-§16, as enacted by PL 2005, c. 346, §6 and affected by §16, is amended to read:

16. Issuance of substitute coverage. In carrying out its duties in connection with guaranteeing, assuming, reissuing or reinsuring policies or contracts under this section, the association may, ~~subject to approval of the receivership court,~~ issue substitute coverage for a policy or contract that provides an interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with this subsection.

A. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for:

- (1) A fixed interest rate;
- (2) Payment or dividends with minimum guarantees; or
- (3) A different method for calculating interest or changes in value.

B. There may not be a requirement for evidence of insurability, waiting period or other exclusion that would not have applied under the replaced policy or contract.

C. The alternative policy or contract must be substantially similar to the replaced policy or contract in all other material terms.

Sec. 25. 24-A MRSA §4609, sub-§3-A, as enacted by PL 2005, c. 346, §7 and affected by §16, is amended to read:

3-A. Determination of assessments. Assessments must be determined as follows:

A. The amount of any Class A assessment, as described in subsection 2-A, for each account must be determined by the board of directors and may be authorized and called on a pro rata or non-pro rata basis. ~~The amount of any Class B assessment, as described in subsection 2-A, must be allocated for assessment purposes among the accounts pursuant to an allocation formula that may~~

~~be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board in its sole discretion as being fair and reasonable under the circumstances. This paragraph may not be a factor in the determination as to whether the protection provided by laws for residents of this State by the domiciliary jurisdiction of a foreign or alien insurer is or is not substantially similar to the protection provided by this chapter for residents of other states. If pro rata, it must be allocated in the same proportions as a Class B assessment under paragraph C, and the board has the power to credit it against future Class B assessments.~~

~~B. Class A assessments, as described in subsection 2-A, against member insurers for each account must be in the proportion that the premiums received on business in this State by each assessed member insurer on policies or contracts covered by each account for the calendar year for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the calendar year for which information is available preceding the year in which the insurer became impaired bears to premiums received on business in this State for the calendar year by all assessed member insurers.~~

~~C. Class B assessments, as described in subsection 2-A, against member insurers for each account must be in the proportion that the premiums received on business in this State by each assessed member insurer on policies or contracts covered by each account for the calendar year for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the calendar year for which information is available preceding the year in which the insurer became impaired bears to premiums received on business in this State for the calendar year by all assessed member insurers must be allocated as follows.~~

~~(1) Except for assessments related to long-term care insurance that are subject to allocation under subparagraph (2), the amount of the assessment must be allocated among the accounts pursuant to an allocation formula that may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board of directors in its sole discretion as being fair and reasonable under the circumstances.~~

~~(2) The amount of any Class B assessment for liabilities arising out of long-term care insurance written by the impaired or insolvent insurer, if the impairment or insolvency is de-~~

clared on or after July 1, 2018, must be allocated among the accounts according to a methodology included in the plan of operation and approved by the superintendent. The methodology must provide for 50% of the assessment to be allocated to member insurers that are health insurers and 50% to be allocated to member insurers that are life and annuity insurers.

(3) All Class B assessments must be allocated among member insurers within each account in the proportion that the premiums received by each assessed member insurer, on business in this State covered by the account, bears to premiums received on such business by all assessed member insurers, for the most recent calendar year for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, preceding the year in which the insurer became impaired.

(4) Health maintenance organizations are not subject to Class B assessments arising out of impairments or insolvencies declared before July 1, 2018.

D. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection 2-A and computation of assessments under this paragraph must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

E. This subsection may not be a factor in determining whether the protection provided by laws for residents of this State by the domiciliary jurisdiction of a foreign or alien insurer is substantially similar to the protection provided by this chapter for residents of other states.

Sec. 26. 24-A MRSA §4611, sub-§2, as enacted by PL 1983, c. 846, is amended to read:

2. Suspension or revocation of certificate of authority. The superintendent may suspend or revoke, after notice and hearing, the certificate of authority to transact ~~insurance business~~ in this State of any member insurer ~~which~~ that fails to pay an assessment when due or fails to comply with the plan of operation. In lieu of such suspension or revocation, any member insurer ~~which~~ that fails to pay an assessment when due or fails to comply with the plan of operation may be punished by a fine not to exceed the greater of 5% of the unpaid assessment per month or \$100 per month.

Sec. 27. 24-A MRSA §4612-A, sub-§§2 and 3, as enacted by PL 2005, c. 346, §11 and affected by §16, are amended to read:

2. Advice and recommendations. The superintendent may seek the advice and recommendations of the board of directors concerning any matter affecting the duties and responsibilities of the superintendent regarding the financial condition of member insurers and companies seeking admission to transact insurance or health maintenance organization business in this State.

3. Action by board of directors. The board of directors, upon majority ballot vote, shall:

A. Notify the superintendent of any information indicating that any member insurer may be an impaired or insolvent insurer;

B. Make reports and recommendations to the superintendent upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance or health maintenance organization business in this State. These reports and recommendations must be treated as confidential by the superintendent; and

C. Make recommendations to the superintendent for the detection and prevention of insurer insolvencies.

Sec. 28. 24-A MRSA §4614, sub-§4, ¶A, as amended by PL 2005, c. 346, §12 and affected by §16, is further amended to read:

A. Prior to the termination of any liquidation, rehabilitation or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policy owners, contract owners, certificate holders and enrollees of the impaired or insolvent insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the impaired or insolvent insurer. In such a determination, consideration must be given to the welfare of the policy owners, contract owners, certificate holders and enrollees of the continuing or successor insurer.

Sec. 29. 24-A MRSA §4620, first ¶, as enacted by PL 2005, c. 346, §14 and affected by §16, is amended to read:

A person, including an a member insurer or an agent or affiliate of an a member insurer, may not make, publish, disseminate, circulate or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in any newspaper, magazine or publication or in the form of a notice, circular, pamphlet, letter or

poster or over any radio station or television station or in any other way any advertisement, announcement or statement, written or oral, that uses the existence of the association for the purpose of sales, solicitation or inducement to purchases of any form of insurance covered by this chapter. This section does not apply to the Maine Life and Health Insurance Guaranty Association or any other entity that does not sell or solicit insurance or health maintenance organization coverage.

Sec. 30. 24-A MRSA §4621, sub-§2-A is enacted to read:

2-A. Insurers not subject to premium tax. A member insurer that is not subject to premium taxation may take the credit allowed under subsection 1 against its income tax liability to this State. A member insurer that is exempt from both premium taxation and income taxation in this State may recoup its assessments by a surcharge on its premiums in an amount reasonably calculated to recoup the assessments over a reasonable period of time, as approved by the superintendent. Amounts recouped are not considered premiums for any other purpose, including medical loss ratio calculations and premium-based assessments. If a member insurer collects excess surcharges, the insurer shall remit the excess amount to the association, and the excess amount must be applied to reduce future assessments in the appropriate account.

See title page for effective date.

CHAPTER 383

H.P. 1293 - L.D. 1855

An Act To Fund the Reorganization of the Department of Public Safety, State Bureau of Identification

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

Whereas, the Department of Public Safety has proposed a management-initiated reorganization of the State Bureau of Identification; and

Whereas, the Department of Administrative and Financial Services, Bureau of Human Resources has reviewed the proposal and authorized the position reclassifications required to support the reorganization plan; and

Whereas, the reorganization cannot be implemented until funding is secured; and

Whereas, the effective and efficient functioning of the State Bureau of Identification is immediately

necessary to its role of supporting law enforcement agencies throughout this State; 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. Appropriations and allocations.

The following appropriations and allocations are made.

PUBLIC SAFETY, DEPARTMENT OF

Background Checks - Certified Nursing Assistants 0992

Initiative: Provides funding for an approved reclassification of one Identification Specialist II position to a State Bureau of Identification Specialist position.

GENERAL FUND	2017-18	2018-19
Personal Services	\$1,707	\$6,829
GENERAL FUND TOTAL	\$1,707	\$6,829

Gambling Control Board Z002

Initiative: Provides funding for an approved reclassification of one Identification Specialist II position to a State Bureau of Identification Specialist position.

GENERAL FUND	2017-18	2018-19
Personal Services	\$1,707	\$6,829
GENERAL FUND TOTAL	\$1,707	\$6,829

Gambling Control Board Z002

Initiative: Eliminates one Information System Security Analyst position.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	(1,000)	(1,000)
Personal Services	(\$23,872)	(\$98,352)
GENERAL FUND TOTAL	(\$23,872)	(\$98,352)

State Police 0291

Initiative: Provides funding for the approved reclassification of 5 Office Associate II positions to State Bureau of Identification Specialist positions, 12 Identification Specialist II positions to State Bureau of Identification Specialist positions, 4 Identification Specialist

Supervisor positions to State Bureau of Identification Specialist Supervisor positions, one Supervisor Identification Bureau position to a State Bureau of Identification Business Systems Manager position, one Planning and Research Associate II position to a Business Systems Administrator position and one Public Service Manager II Range 30 position to a Public Service Manager II Range 32 position.

GENERAL FUND	2017-18	2018-19
Personal Services	\$29,837	\$119,347
GENERAL FUND TOTAL	\$29,837	\$119,347

HIGHWAY FUND	2017-18	2018-19
Personal Services	\$16,066	\$64,264
HIGHWAY FUND TOTAL	\$16,066	\$64,264

State Police 0291

Initiative: Reallocates the costs for one State Bureau of Identification Specialist Supervisor position from 65% General Fund and 35% Highway Fund to 100% Other Special Revenue Funds.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	(1,000)	(1,000)
Personal Services	(\$14,995)	(\$59,979)
GENERAL FUND TOTAL	(\$14,995)	(\$59,979)

HIGHWAY FUND	2017-18	2018-19
Personal Services	(\$8,074)	(\$32,296)
HIGHWAY FUND TOTAL	(\$8,074)	(\$32,296)

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	1,000	1,000
Personal Services	\$23,069	\$92,275
OTHER SPECIAL REVENUE FUNDS TOTAL	\$23,069	\$92,275

State Police 0291

Initiative: Reallocates support costs related to the automated fingerprint identification system from 65% General Fund and 35% Highway Fund to 100% Other Special Revenue Funds.

GENERAL FUND	2017-18	2018-19
Personal Services	(\$11,657)	(\$46,626)
GENERAL FUND TOTAL	(\$11,657)	(\$46,626)
HIGHWAY FUND	2017-18	2018-19
All Other	(\$6,275)	(\$25,101)
HIGHWAY FUND TOTAL	(\$6,275)	(\$25,101)
OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$17,932	\$71,727
OTHER SPECIAL REVENUE FUNDS TOTAL	\$17,932	\$71,727

State Police 0291

Initiative: Eliminates one Office Assistant II position.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	(1,000)	(1,000)
Personal Services	(\$8,829)	(\$35,315)
GENERAL FUND TOTAL	(\$8,829)	(\$35,315)
HIGHWAY FUND	2017-18	2018-19
Personal Services	(\$4,754)	(\$19,016)
HIGHWAY FUND TOTAL	(\$4,754)	(\$19,016)
PUBLIC SAFETY, DEPARTMENT OF DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	(\$26,102)	(\$107,267)
HIGHWAY FUND	(\$3,037)	(\$12,149)
OTHER SPECIAL REVENUE FUNDS	\$41,001	\$164,002
DEPARTMENT TOTAL - ALL FUNDS	\$11,862	\$44,586

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect April 1, 2018.

Effective April 12, 2018.

**CHAPTER 384
H.P. 365 - L.D. 521**

An Act To Align the Criteria Used by the Maine Public Employees Retirement System in Determining Veterans' Disability Claims with the Criteria Used by the United States Department of Veterans Affairs

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

Sec. 1. 5 MRSA §17924, sub-§3 is enacted to read:

3. Qualification of a disabled veteran. Subject to the provisions in subsections 1 and 2, if a member applying for a disability retirement benefit is receiving disability compensation from the United States Department of Veterans Affairs for a service-connected disability based on a determination of individual unemployability pursuant to 38 Code of Federal Regulations, Section 4.16, it is presumed that the member is disabled under section 17921, subsection 1. This presumption may be rebutted only by evidence not considered by the United States Department of Veterans Affairs in making the individual unemployability determination. Notwithstanding section 17922, this subsection applies to any application for a disability retirement benefit made by a member on or after October 1, 2018.

Sec. 2. 5 MRSA §18524, sub-§3 is enacted to read:

3. Qualification of a disabled veteran. Subject to the provisions in subsections 1 and 2, if a member applying for a disability retirement benefit is receiving disability compensation from the United States Department of Veterans Affairs for a service-connected disability based on a determination of individual unemployability pursuant to 38 Code of Federal Regulations, Section 4.16, it is presumed that the member is disabled under section 18521, subsection 1. This presumption may be rebutted only by evidence not considered by the United States Department of Veterans

Affairs in making the individual unemployability determination. Notwithstanding section 18522, this subsection applies to any application for a disability retirement benefit made by a member on or after October 1, 2018.

See title page for effective date.

CHAPTER 385

H.P. 37 - L.D. 51

**An Act To Amend the Process
for a Single Municipality To
Withdraw from a Regional
School Unit**

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

Sec. 1. 20-A MRSA §1466, sub-§4, ¶A, as enacted by PL 2009, c. 580, §9, is amended to read:

A. The commissioner shall direct the municipal officers of the petitioning municipality to select representatives to a withdrawal committee as follows: one member from the municipal officers, one member from the general public and one member from the group filing the petition. The commissioner shall also direct the directors of the regional school unit board representing the petitioning municipality to select one member of the regional school unit board who represents that municipality to serve on the withdrawal committee. The municipal officer and the member of the regional school unit board serve on the withdrawal committee only so long as they hold their respective offices. Vacancies must be filled by the municipal officers and the regional school unit board. The chair of the regional school unit board shall call a meeting of the withdrawal committee within 30 days of the notice of the vote in subsection 3. The chair of the regional school unit board shall open the meeting by presiding over the election of a chair of the withdrawal committee. The responsibility for the preparation of the agreement rests with the withdrawal committee, subject to the approval of the commissioner. The withdrawal committee may draw upon the resources of the department for information not readily available at the local level and employ competent advisors within the fiscal limit authorized by the voters. The agreement must be submitted to the commissioner within 90 days after the withdrawal committee is formed. Extensions of time may be granted by the commissioner upon the request of the withdrawal committee.

(1) The agreement must contain provisions to provide educational services for all students of the petitioning municipality within the re-

gional school unit. The agreement must provide that during the first year following the withdrawal students may attend the school they would have attended if the petitioning municipality had not withdrawn. The allowable tuition rate for students sent from one municipality to another in the former regional school unit must be determined under section 5805, subsection 1, except that it is not subject to the state per pupil average limitation in section 5805, subsection 2.

(2) The agreement must establish that the withdrawal takes effect at the end of the regional school unit's fiscal year.

(3) The agreement must establish that the withdrawal will not cause a need within 5 years from the effective date of withdrawal for school construction projects that would be eligible for state funds. This limitation does not apply when a need for school construction existed prior to the effective date of the withdrawal or when a need for school construction would have arisen even if the municipality had not withdrawn.

(4) The agreement must establish how transportation services will be provided.

(5) The agreement must provide for administration of the new administrative unit, which should not include the creation of new supervisory units if at all possible.

(6) The agreement must make provision for the distribution of financial commitments arising from outstanding bonds, notes and any other contractual obligations that extend beyond the proposed date of withdrawal.

(7) The agreement must provide appropriately for the distribution of any outstanding financial commitments to the superintendent of the regional school unit.

(8) The agreement must provide for the continuation and assignment of collective bargaining agreements as they apply to the new or reorganized regional school unit for the duration of those agreements and must provide for the continuation of representational rights.

(9) The agreement must provide for the continuation of continuing contract rights under section 13201.

(10) The agreement must provide for the disposition of all real and personal property and other monetary assets.

(11) The agreement must provide for the transition of administration and governance of the schools to properly elected governing

bodies of the newly created administrative unit and must provide that the governing body may not be elected simultaneously with the vote on the article to withdraw unless the commissioner finds there are extenuating circumstances that necessitate simultaneous elections.

(12) The agreement must contain provisions to provide child nutrition services in compliance with state and federal laws at schools operated by the petitioning municipality.

(13) The agreement must include an anticipated budget for the petitioning municipality for the first year of operation of schools operated by the petitioning municipality. The budget must include an estimate of all revenues and expenditures in accordance with the cost center summary budget format pursuant to section 1485.

Sec. 2. 20-A MRSA §1466, sub-§5, ¶A, as enacted by PL 2009, c. 580, §9, is amended to read:

A. The commissioner shall determine the date upon which the voters of the petitioning municipality must vote upon the agreement submitted to them. The election must be held as soon as practicable, and the commissioner shall attempt to set the date of the vote to coincide with a statewide election. The commissioner shall set a date that allows determination of the vote no later than November 30th of the year prior to the intended July 1st effective operational date for the schools of the withdrawn municipality.

See title page for effective date.

CHAPTER 386

H.P. 1185 - L.D. 1705

An Act To Strengthen Crime Victims' Rights

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

Sec. 1. 17-A MRSA §1175, as amended by PL 2017, c. 128, §§1 to 3, is further amended to read:

§1175. Notification of defendant's release or escape

Upon complying with subsection 1, a victim of a crime of murder or of a Class A, Class B or Class C crime or of a Class D crime under chapters 9, 11 and 12 for which the defendant is committed to the Department of Corrections or to a county jail or is committed to the custody of the Commissioner of Health and Human Services either under Title 15, section 103 after having been found not criminally responsible by reason of insanity or under Title 15, section 101-D

after having been found incompetent to stand trial must receive notice of the defendant's unconditional release and discharge from institutional confinement upon the expiration of the sentence or upon release from commitment under Title 15, section 101-D or upon discharge under Title 15, section 104-A ~~and~~; must receive notice of any conditional release of the defendant from institutional confinement, including probation, supervised release for sex offenders, parole, furlough, work release, funeral or deathbed visit, supervised community confinement, home release monitoring or similar program, administrative release or release under Title 15, section 104-A; and must receive notice of the defendant's escape from the Department of Corrections, the custody of the Commissioner of Health and Human Services or the county jail to which the defendant is committed. For purposes of this section, "victim" also includes a person who has obtained under Title 19-A, section 4007 an active protective order or approved consent agreement against the defendant.

1. A victim who wishes to receive notification must file a request for notification of the defendant's release or escape with the office of the attorney for the State. The attorney for the State shall forward this request form to the Department of Corrections, to the state mental health institute or to the county jail to which that defendant is committed. Notwithstanding this subsection, a victim who wishes to receive notification regarding a defendant who is committed to the Department of Corrections may file a request for notification of the defendant's release or escape directly with the Department of Corrections.

2. The Department of Corrections, the state mental health institute or the county jail to which the defendant is committed shall keep the victim's written request in the file of the defendant and shall notify the victim by mail of any impending release as soon as the release date is set or, if the defendant has escaped, by the quickest means reasonably practicable. This notice must be mailed to the address provided in the request or any subsequent address provided by the victim.

3. ~~The~~ If the defendant is being released, the notice required by this section must contain:

A. The name of the defendant;

B. The nature of the release authorized, whether it is a conditional release, including probation, supervised release for sex offenders, parole, furlough, work release, funeral or deathbed visit, supervised community confinement, home release monitoring or a similar program, administrative release or release under Title 15, section 104-A, or an unconditional release and discharge upon release from commitment under Title 15, section 101-D or upon the expiration of a sentence or upon discharge under Title 15, section 104-A;

C. The anticipated date of the defendant's release from institutional confinement and any date on which the defendant must return to institutional confinement, if applicable;

D. The geographic area to which the defendant's release is limited, if any;

E. The address at which the defendant will reside; and

F. The address at which the defendant will work, if applicable.

3-A. If the defendant has escaped, the notice required by this section must contain the name of the defendant, the manner of the escape, the place from which the defendant escaped and the date of the escape.

4. The notice requirement under this section ends when:

A. Notice has been provided of an unconditional release or discharge upon the expiration of the sentence or upon release under Title 15, section 101-D or upon discharge under Title 15, section 104-A; or

B. The victim has filed a written request with the Department of Corrections, the state mental health institute or the county jail to which the defendant is committed asking that no further notice be given.

5. Neither the failure to perform the requirements of this chapter nor compliance with this chapter subjects the attorney for the State, the Commissioner of Corrections, the Department of Corrections, the Commissioner of Health and Human Services, the ~~state mental health institute~~ institution for the care and treatment of persons with mental illness to which the defendant is committed by the Commissioner of Health and Human Services or the residential program that provides care and treatment for persons who have intellectual disabilities or autism to which the defendant is committed by the Commissioner of Health and Human Services or the county jail or the employees or officers of the attorney for the State, the Commissioner of Corrections, the Department of Corrections, the Commissioner of Health and Human Services, the ~~state mental health institute~~ institution for the care and treatment of persons with mental illness to which the defendant is committed by the Commissioner of Health and Human Services or the residential program that provides care and treatment for persons who have intellectual disabilities or autism to which the defendant is committed by the Commissioner of Health and Human Services or the county jail to liability in a civil action.

See title page for effective date.

**CHAPTER 387
H.P. 1223 - L.D. 1774**

An Act To Reduce Child Poverty by Leveraging Investments in Families for Tomorrow

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

Sec. 1. 22 MRSA c. 1054-C is enacted to read:

CHAPTER 1054-C

HIGHER OPPORTUNITY FOR PATHWAYS TO EMPLOYMENT PROGRAM

§3790-A. Higher Opportunity for Pathways to Employment Program

1. Program established. The department shall establish a student financial aid program based on need to be known as the Higher Opportunity for Pathways to Employment Program, referred to in this chapter as "the program," for a parent or caretaker relative of a minor child who is qualified to receive federal Temporary Assistance for Needy Families funds but does not receive Temporary Assistance for Needy Families cash assistance pursuant to chapter 1053-B and is matriculating in an education or training program, or is enrolled in a program providing remedial services necessary for the parent or caretaker relative to matriculate, that results in a high-value, industry-recognized certificate or similar credential, a postsecondary undergraduate 2-year degree or a postsecondary undergraduate 4-year degree in a health care, technology or engineering field. The department shall specify the health care, technology and engineering fields for the postsecondary undergraduate 4-year degree in department rules.

Enrollment in the program may not exceed 500 participants. To administer the program, the department may not divert funding from assistance and support services to families under the Temporary Assistance for Needy Families program pursuant to chapter 1053-B or from the operation of the Additional Support for People in Retraining and Employment - Temporary Assistance for Needy Families program pursuant to chapter 1054-A. If the commissioner reasonably anticipates that available funds will not support continued operation of the program, the commissioner shall limit or suspend enrollment or program services to the extent necessary to avoid negative effects to services provided under chapters 1053-B and 1054-A.

The program must be supported with funds provided under the Temporary Assistance for Needy Families block grant that are available under Title IV-A of the United States Social Security Act or funds transferred from that block grant to the social services block grant

authorized under Title XX of the United States Social Security Act or the child care and development block grant authorized under the federal Child Care and Development Block Grant Act of 1990 and Section 418 of the United States Social Security Act. The department may not expend federal Temporary Assistance for Needy Families funds for services that meet the definition of "assistance" under regulations promulgated pursuant to the United States Social Security Act. To the extent allowable under federal law and subject to federal approval procedures associated with such funds, the program may also be supported with other federal funds, including, but not limited to, employment and training funds from the Supplemental Nutrition Assistance Program.

2. Eligibility criteria. To the extent that enrollment limits under subsection 1 permit, enrollment or continued participation in the program must be granted if the applicant or participant:

A. Does not already have a marketable bachelor's degree;

B. Has the aptitude to successfully complete the proposed education or training program;

C. Is pursuing a postsecondary undergraduate degree, industry-recognized certificate or similar credential in a field or occupation that has at least an average job outlook as identified by the Center for Workforce Research and Information within the Department of Labor. For fields or occupations for which the job outlook is lower than average, the commissioner or the commissioner's designee must approve the applicant's or participant's education plan. If the applicant or participant is pursuing a postsecondary undergraduate 4-year degree, it must be in a health care, technology or engineering field as specified in department rules;

D. Is making satisfactory progress in the education or training program;

E. Has income that is equal to or below 185% of the nonfarm income official poverty line for a family of the size involved as defined by the federal Office of Management and Budget and revised annually in accordance with the United States Omnibus Budget Reconciliation Act of 1981, Section 673, Subsection 2; and

F. Has countable assets as described in department rules in the Temporary Assistance for Needy Families program pursuant to chapter 1053-B that are equal to or below \$10,000.

3. Program assistance. A program participant must be provided with a package of student aid that includes all support services necessary for participation in the program that are at least equivalent to those provided under chapter 1054-A.

4. Campus-based student support and navigation. The department shall provide annually up to \$1,000,000 in Temporary Assistance for Needy Families funds described in subsection 1 to educational institutions to establish or supplement personalized professional guidance, support and navigation services provided directly to program participants to promote program completion and student success.

5. Protection from loss of income. To the extent permitted by federal law, aid received under this section must be disregarded as income and excluded as a resource or asset for the purposes of any state, federal, tribal or municipal assistance program.

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

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF**

Temporary Assistance for Needy Families 0138

Initiative: Provides an allocation for campus-based student support and navigation services in the Higher Opportunity for Pathways to Employment Program.

FEDERAL BLOCK GRANT FUND	2017-18	2018-19
All Other	\$0	\$420,000
FEDERAL BLOCK GRANT FUND TOTAL	\$0	\$420,000

Temporary Assistance for Needy Families 0138

Initiative: Provides allocations for the Higher Opportunity for Pathways to Employment Program available to persons with minor children who do not receive cash assistance under the Temporary Assistance for Needy Families program, who have incomes at or below 185% of the federal poverty level and who are pursuing a postsecondary degree, industry-recognized certificate or similar credential.

FEDERAL BLOCK GRANT FUND	2017-18	2018-19
All Other	\$0	\$1,461,136
FEDERAL BLOCK GRANT FUND TOTAL	\$0	\$1,461,136

Temporary Assistance for Needy Families 0138

Initiative: Provides an allocation for one Family Independence Program Manager for the Higher Opportunity for Pathways to Employment Program.

FEDERAL BLOCK GRANT FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	\$0	\$98,635
All Other	\$0	\$6,286
FEDERAL BLOCK GRANT FUND TOTAL	\$0	\$104,921

Temporary Assistance for Needy Families 0138

Initiative: Provides allocations for 2 Senior Planner positions for the Higher Opportunity for Pathways to Employment Program.

FEDERAL BLOCK GRANT FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	2.000
Personal Services	\$0	\$167,953
All Other	\$0	\$12,572
FEDERAL BLOCK GRANT FUND TOTAL	\$0	\$180,525

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

DEPARTMENT TOTALS	2017-18	2018-19
FEDERAL BLOCK GRANT FUND	\$0	\$2,166,582
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$2,166,582

See title page for effective date.

CHAPTER 388

H.P. 1267 - L.D. 1825

An Act To Implement the Recommendations of the Board of Dental Practice

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

Sec. 1. 32 MRSA §18302, sub-§§2 and 3, as enacted by PL 2015, c. 429, §21, are repealed.

Sec. 2. 32 MRSA §18302, sub-§11, as enacted by PL 2015, c. 429, §21, is amended to read:

11. Dental radiography. "Dental radiography" means the use of ionizing radiation on the maxilla, mandible and adjacent structures of human beings for diagnostic purposes while under the general supervision of a dentist or an independent practice dental hygienist in accordance with this chapter.

Sec. 3. 32 MRSA §18302, sub-§15, as enacted by PL 2015, c. 429, §21, is amended to read:

15. Denturism. "Denturism" means the process of ~~taking~~ obtaining denture impressions and bite registrations for the purpose of making, producing, reproducing, constructing, finishing, supplying, altering or repairing of a denture to be fitted to an edentulous or partially edentulous arch or arches and the fitting of a denture to an edentulous or partially edentulous arch or arches, including the making, producing, reproducing, constructing, finishing, supplying, altering and repairing of dentures, without performing alteration to natural or reconstructed tooth structure, in accordance with this chapter.

Sec. 4. 32 MRSA §18302, sub-§34, as enacted by PL 2015, c. 429, §21, is repealed.

Sec. 5. 32 MRSA §18304, sub-§2, ¶H, as enacted by PL 2015, c. 429, §21, is amended to read:

H. Employ a ~~an unlicensed person as a dental hygienist, independent practice dental hygienist, dentist or dental radiographer who is not licensed to practice to provide services for which a license is required by this chapter.~~

Sec. 6. 32 MRSA §18305, sub-§2, ¶J, as enacted by PL 2015, c. 429, §21, is amended to read:

J. A student enrolled in a dental assisting program or a board-approved dental program, dental hygiene program, dental therapy program, expanded function dental assisting program, dental radiography program or a denturism program practicing under the direct or general supervision of that student's instructors; and

Sec. 7. 32 MRSA §18305, sub-§2, ¶K, as enacted by PL 2015, c. 429, §21, is repealed.

Sec. 8. 32 MRSA §18342, sub-§§4 and 5, as enacted by PL 2015, c. 429, §21, are repealed.

Sec. 9. 32 MRSA §18345, sub-§1, ¶A, as enacted by PL 2015, c. 429, §21, is amended to read:

A. Verification of having successfully passed all examinations required by board rule and one of the following:

(1) Verification of an associate degree or higher in dental hygiene from a ~~school program~~ program accredited by the American Dental Association Commission on Dental Accreditation, or its successor organization; or

(2) Verification of having completed at least 1/2 of the prescribed course of study in an accredited dental college as a dental student.

Sec. 10. 32 MRSA §18348, sub-§1, as enacted by PL 2015, c. 429, §21, is repealed.

Sec. 11. 32 MRSA §18348, sub-§4, as enacted by PL 2015, c. 429, §21, is amended to read:

4. Denturist trainee registration. A denturist or dentist may register under that dentist's or denturist's license ~~a student an individual who has completed a board-approved denturism postsecondary program~~ for the purpose of providing additional clinical supervision outside of the academic setting. A registration under this section expires one year from the date the registration is granted, but may be renewed for an additional year. An applicant must comply with section 18341 and must provide:

A. Verification that the ~~student trainee~~ has an academic affiliation and good academic standing as a denturist student in successfully completed a denturist denturism program approved by the board; and

B. ~~Verification from the denturist program that the student has completed satisfactory training and is ready to perform limited denturist services outside of the school setting under the supervision of a denturist or a dentist; and~~

C. A letter from the supervising denturist or dentist that describes the level of supervision that the denturist or dentist will provide and that attests that the performance of these services by the ~~student trainee~~ will add to the student's trainee's knowledge and skill in denturism.

Sec. 12. 32 MRSA §18351, 2nd ¶, as enacted by PL 2015, c. 429, §21, is amended to read:

An individual who practices under a ~~clinical dentist educator license, a charitable dentist license or a resident dentist license or as a provisional dental hygiene therapist~~ may not apply for inactive status.

Sec. 13. 32 MRSA §18371, sub-§1, as enacted by PL 2015, c. 429, §21, is amended to read:

1. Scope of practice. A dentist, ~~charitable dentist, clinical dentist educator,~~ faculty dentist, limited dentist or resident dentist may:

A. Perform a dental operation or oral surgery or dental service of any kind, gratuitously or for a salary, fee, money or other compensation paid, or to be paid, directly or indirectly to the person or to

any other person or agency who is a proprietor of a place where dental operations, oral surgery or dental services are performed;

B. ~~Take~~ Obtain impressions of a human tooth, teeth or jaws and perform a phase of an operation incident to the replacement of a part of a tooth;

C. Supply artificial substitutes for the natural teeth and furnish, supply, construct, reproduce or repair a prosthetic denture, bridge, appliance or any other structure to be worn in the human mouth;

D. Place dental appliances or structures in the human mouth and adjust or attempt or profess to adjust the same;

E. Furnish, supply, construct, reproduce or repair or profess to the public to furnish, supply, construct, reproduce or repair a prosthetic denture, bridge, appliance or other structure to be worn in the human mouth;

F. Diagnose or profess to diagnose, prescribe for and treat or profess to prescribe for and treat disease, pain, deformity, deficiency, injury or physical condition of the human teeth or jaws or adjacent structure;

G. Extract or attempt to extract human teeth;

H. Correct or attempt to correct malformations of teeth and jaws;

I. Repair or fill cavities in the human teeth;

J. Diagnose malposed teeth and make and adjust appliances or artificial casts for treatment of the malposed teeth in the human mouth with or without instruction;

K. Use an x-ray machine for the purpose of taking dental x-rays and interpret or read or profess to interpret or read dental x-rays;

L. Use the words dentist, dental surgeon or oral surgeon and the letters D.D.S. or D.M.D. and any other words, letters, title or descriptive matter that represents that person as being able to diagnose, treat, prescribe or operate for a disease, pain, deformity, deficiency, injury or physical condition of the human teeth or jaws or adjacent structures and state, profess or permit to be stated or professed by any means or method whatsoever that the person can perform or will attempt to perform dental operations or render a diagnosis connected with dental operations;

M. Prescribe drugs or medicine and administer local anesthesia, analgesia including nitrous oxide and oxygen inhalation and, with the appropriate permit issued by the board, administer sedation and general anesthesia necessary for proper dental treatment; and

N. Take case histories and perform physical examinations to the extent the activities are necessary in the exercise of due care in conjunction with the provision of dental treatment or the administration of anesthesia. A dentist is not permitted to perform physical examinations within a hospital licensed by the Department of Health and Human Services unless this activity is permitted by the hospital.

Sec. 14. 32 MRSA §18371, sub-§2, ¶¶A and B, as enacted by PL 2015, c. 429, §21, are repealed.

Sec. 15. 32 MRSA §18371, sub-§3, ¶¶A and C, as enacted by PL 2015, c. 429, §21, are amended to read:

A. A dentist may delegate the following activities to an unlicensed person as long as these activities are conducted under the general supervision of the delegating dentist:

- (1) Changing or replacing dry socket packets after diagnosis and treatment planned by a dentist;
- (2) For instruction purposes, demonstrating to a patient how the patient should place and remove removable prostheses, appliances or retainers;
- (3) For the purpose of eliminating pain or discomfort, removing loose, broken or irritating orthodontic appliances;
- (4) Giving oral health instructions;
- (5) Irrigating and aspirating the oral cavity;
- (6) Performing dietary analyses for dental disease control;
- (7) Placing and recementing with temporary cement an existing crown that has fallen out as long as the ~~dental assistant promptly notifies the dentist~~ is promptly notified that this procedure was performed so that appropriate follow-up can occur;
- (8) Placing and removing periodontal dressing;
- (9) Pouring and trimming dental models;
- (10) Removing sutures and scheduling a follow-up appointment with the dentist within 7 to 10 days of suture removal;
- (11) Retracting lips, cheek, tongue and other tissue parts;
- (12) ~~Taking and pouring~~ Obtaining impressions for study casts;
- (13) Taking and recording the vital signs of blood pressure, pulse and temperature;

(14) Taking dental plaque smears for microscopic inspection and patient education; and

(15) Taking intraoral photographs.

C. A dentist may delegate to an unlicensed person the following intraoral activities, which must be conducted under the direct supervision of the delegating dentist:

- (1) Applying cavity varnish;
- (2) Applying liquids, pastes and gel topical anesthetics;
- (3) Assisting a dentist who provides orthodontic services in preparation of teeth for attaching, bonding and cementing fixed appliances in a manner appropriate and according to manufacturer's directions;
- (4) Delivering, but not condensing or packing, amalgam or composite restoration material;
- (5) Fabricating temporary crowns and bridges, limiting handpiece rotary instrumentation used in the fabrication to extraoral use only, as long as the dentist checks the occlusion and fit prior to releasing the patient;
- (6) Irrigating and drying root canals;
- (7) Isolating the operative field;
- (8) Performing ~~cold pulp~~ pulp vitality testing with confirmation by the dentist;
- (9) Performing electronic vitality scanning with confirmation by the dentist;
- (10) Performing preliminary selection and fitting of orthodontic bands, with final placement and cementing in the patient's mouth by the dentist;
- (11) Placing and cementing temporary crowns with temporary cement;
- (12) Placing and removing matrix bands, rubber dams and wedges;
- (13) Placing elastics and instructing in their use;
- (14) Placing, holding or removing celluloid and other plastic strips prior to or subsequent to the placement of a filling by the dentist;
- (15) Placing or removing temporary separating devices;
- (16) Placing wires, pins and elastic ligatures to tie in orthodontic arch wires that have been fitted and approved by the dentist at the time of insertion;
- (17) Preparing tooth sites and surfaces with a rubber cup and pumice for banding or bond-

ing of orthodontic brackets. This procedure may not be intended or interpreted as an oral prophylaxis, which is a procedure specifically reserved to be performed by dental hygienists or dentists. This procedure also may not be intended or interpreted as a preparation for restorative material. A dentist or dental hygienist shall check and approve the procedure;

(18) Reapplying, on an emergency basis only, orthodontic brackets;

(19) Recording readings with a digital caries detector and reporting them to the dentist for interpretation and evaluation;

(20) Removing composite material using slow-speed instrumentation for debonding brackets, as long as the dentist conducts a final check prior to release of the patient;

(21) Removing excess cement from the supragingival surfaces of teeth;

(22) Removing gingival retraction cord;

(23) Removing orthodontic arch wires and tension devices and any loose bands or bonds, but only as directed by the dentist;

(24) Selecting and trying in stainless steel or other preformed crowns for insertion by the dentist;

(25) ~~Taking~~ Obtaining impressions for opposing models and retainers;

(26) ~~Taking~~ Obtaining impressions for single-arch athletic mouth guards, bleaching trays, custom trays and fluoride trays; and

(27) Taking intraoral measurements and making preliminary selection of arch wires and intraoral and extraoral appliances, including head gear.

Sec. 16. 32 MRSA §18372, sub-§1, as enacted by PL 2015, c. 429, §21, is amended to read:

1. Scope of practice. A licensed dental radiographer may practice dental radiography under the general supervision of a dentist or an independent practice dental hygienist.

Sec. 17. 32 MRSA §18373, sub-§§1 and 2, as enacted by PL 2015, c. 429, §21, are amended to read:

1. Scope of practice; direct supervision. An expanded function dental assistant may perform under the direct supervision of a dentist all of the activities that may be delegated by a dentist to an unlicensed person pursuant to section 18371, subsection 3, paragraph C. An expanded function dental assistant may also perform the following reversible intraoral proce-

dures activities authorized under the direct supervision of a dentist:

A. Apply cavity liners and bases as long as the dentist:

(1) Has ordered the cavity liner or base;

(2) Has checked the cavity liner or base prior to the placement of the restoration; and

(3) Has checked the final restoration prior to patient dismissal;

B. Apply pit and fissure sealants after an evaluation of the teeth by the dentist at the time of sealant placement;

C. Apply supragingival desensitizing agents to an exposed root surface or dentinal surface of teeth;

D. Apply topical fluorides recognized for the prevention of dental caries;

E. Cement provisional or temporary crowns and bridges and remove excess cement;

F. Perform ~~tooth~~ pulp vitality tests;

G. Place and contour amalgam, composite and other restorative materials prior to the final setting or curing of the material;

~~H. Place and remove periodontal dressing;~~

I. Place and remove gingival retraction cord;

~~J. Record readings with a digital caries detector and report them to the dentist for interpretation and evaluation;~~

K. Size, place and cement or bond orthodontic bands and brackets with final inspection by the dentist;

L. Supragingival polishing. A dentist or a dental hygienist must first determine that the teeth to be polished are free of calculus or other extraneous material prior to polishing. Dentists may permit an expanded function dental assistant to use only a slow-speed rotary instrument and rubber cup. Dentists may allow an expanded function dental assistant to use high-speed, power-driven handpieces or instruments to contour or finish newly placed composite materials; and

~~M. Take and pour~~ Obtain impressions for ~~bleaching trays,~~ athletic mouth guards, provisional or temporary crowns; and bridges; ~~custom trays and fluoride trays;~~

~~N. Apply cavity varnish;~~

~~O. Apply liquids, pastes and gel topical anesthetics;~~

~~P. Assist a dentist who provides orthodontic services in preparation of teeth for attaching, bonding and cementing fixed appliances in a manner~~

appropriate and according to the manufacturer's directions;

~~Q. Fabricate temporary crowns and bridges, limiting handpiece rotary instrumentation used in the fabrication to extraoral use only, as long as the dentist checks the occlusion and fit prior to releasing the patient;~~

~~R. Irrigate and dry root canals;~~

~~S. Isolate the operative field;~~

~~T. Perform cold vitality testing with confirmation by the dentist;~~

~~U. Perform electronic vitality scanning with confirmation by the dentist;~~

~~V. Place and remove matrix bands, rubber dams and wedges;~~

~~W. Place elastics and instruct in their use;~~

~~X. Place, hold or remove celluloid and other plastic strips prior to or subsequent to the placement of a filling by the dentist;~~

~~Y. Place or remove temporary separating devices;~~

~~Z. Place wires, pins and elastic ligatures to tie in orthodontic arch wires that have been fitted and approved by the dentist at the time of insertion;~~

~~AA. Prepare tooth sites and surfaces with a rubber cup and pumice for banding or bonding of orthodontic brackets. This procedure may not be intended or interpreted as an oral prophylaxis, which is a procedure specifically reserved to be performed by dental hygienists or dentists. This procedure also may not be intended or interpreted as a preparation for restorative material. A dentist or dental hygienist shall check and approve the procedure;~~

~~BB. Reapply, on an emergency basis only, orthodontic brackets;~~

~~CC. Remove composite material using slow-speed instrumentation for debonding brackets, as long as the dentist conducts a final check prior to release of the patient;~~

~~DD. Remove orthodontic arch wires and tension devices and any loose bands or bonds, but only as directed by the dentist;~~

~~EE. Select and try in stainless steel or other preformed crowns for insertion by the dentist;~~

~~FF. Take impressions for opposing models and retainers; and~~

~~GG. Take intraoral measurements and make preliminary selection of arch wires and intraoral and extraoral appliances, including head gear.~~

2. Scope of practice; general supervision. An expanded function dental assistant may perform the following procedures under the general supervision of a dentist: all of the activities that may be delegated by a dentist to an unlicensed person pursuant to section 18371, subsection 3, paragraphs A and B.

~~A. Place temporary fillings on an emergency basis as long as the patient is informed of the temporary nature of the fillings;~~

~~B. Remove excess cement from the supragingival surfaces of teeth;~~

~~C. Change or replace dry socket packets after diagnosis and treatment planned by a dentist;~~

~~D. For instruction purposes, demonstrate to a patient how the patient should place and remove removable prostheses, appliances or retainers;~~

~~E. For the purpose of eliminating pain or discomfort, remove loose, broken or irritating orthodontic appliances;~~

~~F. Give oral health instructions;~~

~~G. Irrigate and aspirate the oral cavity;~~

~~H. Perform dietary analyses for dental disease control;~~

~~I. Place and recement with temporary cement an existing crown that has fallen out as long the dental assistant promptly notifies the dentist this procedure was performed so that appropriate follow-up can occur;~~

~~J. Place and remove periodontal dressing;~~

~~K. Pour and trim dental models;~~

~~L. Remove sutures and schedule a follow up appointment with the dentist within 7 to 10 days of suture removal;~~

~~M. Retract lips, cheek, tongue and other tissue parts;~~

~~N. Take and pour impressions for study casts;~~

~~O. Take and record the vital signs of blood pressure, pulse and temperature;~~

~~P. Take dental plaque smears for microscopic inspection and patient education; and~~

~~Q. Take intraoral photographs.~~

Sec. 18. 32 MRSA §18374, sub-§1, ¶F, as enacted by PL 2015, c. 429, §21, is amended to read:

F. ~~Take Obtain~~ impressions for nightguards and occlusal splints as long as the dentist takes all measurements and bite registrations.

Sec. 19. 32 MRSA §18374, sub-§2, as enacted by PL 2015, c. 429, §21, is amended to read:

2. Scope of practice; general supervision. A dental hygienist and faculty dental hygienist may perform under the general supervision of a dentist all of the activities that may be delegated to an unlicensed person pursuant to section 18371, subsection 3, except the activities in section 18371, subsection 3, paragraph C, subparagraphs (6), (17) and (19). A dental hygienist and faculty dental hygienist may also perform the following procedures under the general supervision of a dentist:

- A. Prescribe, dispense or administer anticavity toothpastes or topical gels with 1.1% or less sodium fluoride and oral rinses with 0.05%, 0.2%, 0.44% or 0.5% sodium fluoride, as well as chlorhexidine gluconate oral rinse;
- ~~B. Apply cavity varnish;~~
- C. Apply desensitizing agents to teeth;
- D. Apply fluoride to control caries;
- ~~E. Apply liquids, pastes or gel topical anesthetics;~~
- ~~F. Apply sealants, as long as a licensed dentist first makes the determination and diagnosis as to the surfaces on which the sealants are applied;~~
- ~~G. Cement pontics and facings outside the mouth;~~
- ~~H. Change or replace dry socket packets after diagnosis and treatment planned by a dentist;~~
- ~~I. Deliver, but not condense or pack, amalgam or composite restoration material;~~
- J. Expose and process radiographs;
- ~~K. Fabricate temporary crowns and bridges, limiting handpiece rotary instrumentation used in the fabrication to extraoral use only, as long as the dentist checks the occlusion and fit prior to releasing the patient;~~
- ~~L. For instruction purposes, demonstrate to a patient how the patient should place and remove removable prostheses, appliances or retainers;~~
- ~~M. For the purpose of eliminating pain or discomfort, remove loose, broken or irritating orthodontic appliances;~~
- ~~N. Give oral health instruction;~~
- O. Interview patients and record complete medical and dental histories;
- ~~P. Irrigate and aspirate the oral cavity;~~
- ~~Q. Isolate operative fields;~~
- R. Obtain bacterial sampling when treatment is planned by the dentist;
- S. Perform all procedures necessary for a complete prophylaxis, including root planing;

~~T. Perform cold vitality testing with confirmation by the dentist;~~

U. Perform complete periodontal and dental restorative charting;

~~V. Perform dietary analyses for dental disease control;~~

~~W. Perform electronic vitality scanning with confirmation by the dentist;~~

X. Perform oral inspections, recording all conditions that should be called to the attention of the dentist;

Y. Perform postoperative irrigation of surgical sites;

~~Z. Perform preliminary selection and fitting of orthodontic bands, as long as final placement and cementing in the patient's mouth are done by the dentist;~~

~~AA. Place and recement temporary crowns with temporary cement;~~

~~BB. Place and recement with temporary cement an existing crown that has fallen out;~~

CC. Place and remove gingival retraction cord without vasoconstrictor;

~~DD. Place and remove matrix bands, periodontal dressing, rubber dams and wedges;~~

~~EE. Place elasties or instruct in their use;~~

~~FF. Place, hold or remove celluloid and other plastic strips prior to or subsequent to the placement of a filling by the dentist;~~

GG. Place localized delivery of chemotherapeutic agents when treatment is planned by the dentist;

~~HH. Place or remove temporary separating devices;~~

~~II. Place wires, pins and elastic ligatures to tie in orthodontic arch wires that have been fitted and approved by the dentist at the time of insertion;~~

JJ. Place temporary restorations as an emergency procedure, as long as the patient is informed of the temporary nature of the restoration;

~~KK. Pour and trim dental models;~~

LL. Prepare tooth sites and surfaces with a rubber cup and pumice for banding or bonding of orthodontic brackets. This procedure may not be interpreted as a preparation for restorative material;

~~MM. Reapply, on an emergency basis only, orthodontic brackets;~~

~~NN. Remove composite material using slow-speed instrumentation for debonding brackets, as~~

~~long as the dentist conducts a final check prior to release of the patient;~~

~~OO. Remove excess cement from the supragingival surfaces of teeth;~~

~~PP. Remove orthodontic arch wires and tension devices and any loose bands or bonds, but only as directed by the dentist;~~

~~QQ. Remove sutures;~~

~~RR. Retract lips, cheek, tongue and other tissue parts;~~

~~SS. Select and try in stainless steel or other preformed crowns for insertion by the dentist;~~

~~TT. Smooth and polish amalgam restorations; and~~

~~UU. Take and record the vital signs of blood pressure, pulse and temperature;~~

~~VV. Take and pour Obtain impressions for study casts, athletic mouth guards, custom trays, bleaching trays, fluoride trays, opposing models, retainers and stents;~~

~~WW. Take dental plaque smears for microscopic inspection and patient education;~~

~~XX. Take intraoral measurements and make preliminary selection of arch wires and intraoral and extraoral appliances, including head gear; and~~

~~YY. Take intraoral photographs.~~

Sec. 20. 32 MRSA §18375, sub-§1, ¶K, as enacted by PL 2015, c. 429, §21, is repealed.

Sec. 21. 32 MRSA §18375, sub-§1, ¶L, as enacted by PL 2015, c. 429, §21, is amended to read:

L. Take Obtain impressions for athletic mouth guards and custom fluoride trays;

Sec. 22. 32 MRSA §18376, sub-§1, ¶H, as enacted by PL 2015, c. 429, §21, is repealed.

Sec. 23. 32 MRSA §18376, sub-§1, ¶¶U and FF, as enacted by PL 2015, c. 429, §21, are amended to read:

U. Perform pulp vitality tests pursuant to the direction of a dentist;

FF. Take Obtain impressions for and deliver athletic mouth guards and custom fluoride trays; and

Sec. 24. 32 MRSA §18378, sub-§1, ¶A, as enacted by PL 2015, c. 429, §21, is amended to read:

A. Take Obtain denture impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, ~~construction~~ constructing, finishing, supplying, altering or repairing a denture to be fitted to an edentulous or partially edentulous arch or arches;

Sec. 25. Charitable dentist licenses and clinical dentist educator licenses; expiration date. A charitable dentist license and a clinical dentist educator license issued by the Board of Dental Practice and in effect on the effective date of this Act remain in effect and authorize the license holder to practice until the date of expiration specified in the license.

See title page for effective date.

CHAPTER 389

S.P. 703 - L.D. 1858

An Act To Include Security Installations and Upgrades in Maine's School Revolving Renovation Fund

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

Sec. 1. 30-A MRSA §6006-F, sub-§3, ¶A, as amended by PL 2011, c. 153, §1, is further amended to read:

A. To make loans to school administrative units for school repair and renovation.

(1) The following repair and renovation needs receive Priority 1 status:

(a) Repair or replacement of a roof on a school building;

(b) Bringing a school building into compliance with the federal Americans with Disabilities Act, 42 United States Code, Section 12101 et seq.;

(c) Improving air quality in a school building;

(d) Removing or abating hazardous materials in a school building; and

(f) Undertaking other health, safety and compliance repairs, including installations or improvements necessary to increase school facility security.

(2) Repairs and improvements related to a school building structure, windows and doors and water or septic systems receive Priority 2 status.

(3) Repairs and improvements related to energy and water conservation receive Priority 3 status.

(4) Upgrades of learning spaces in school buildings receive Priority 4 status.

(5) The Commissioner of Education may approve other necessary repairs;

See title page for effective date.

CHAPTER 390

H.P. 681 - L.D. 968

An Act To Help Prevent Financial Elder Abuse

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

Sec. 1. 9-B MRSA §427, sub-§13, as enacted by PL 1979, c. 540, §13-A, is amended to read:

13. Notice on opening certain accounts. A signature card or other document establishing a multiple-party account, as defined in Title 18-A, section 6-101, ~~shall~~ must contain a clear and conspicuous printed notice to the depositor that on ~~his~~ the depositor's death the balance in the account will belong to the surviving party. At the time a multiple-party account is established or at the time a single-party account is converted to a multiple-party account with a financial institution, the document establishing the account or adding another party must include for each party to the account the question, "Do you intend for the sum remaining upon your death to belong to the surviving party or parties? Yes or No." The question required by this subsection must be answered in writing on the form by each party to the account prior to opening the account. The answer provided on the form required by this subsection does not have any effect on any legal presumption or inference available in any civil or criminal matter.

Sec. 2. 18-A MRSA §6-105, as enacted by PL 1979, c. 540, §1, is amended to read:

§6-105. Effect of written notice to financial institution

The provisions of section 6-104 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during ~~his~~ the party's lifetime.

At the time a multiple-party account is established or at the time a single-party account is converted to a multiple-party account with a financial institution, the document creating the account or adding another party must include for each party to the account the question, "Do you intend for the sum remaining upon your

death to belong to the surviving party or parties? Yes or No." The question required by this paragraph must be answered in writing on the form by each party to the account prior to opening the account. The answer provided on the form required by this paragraph does not have any effect on any legal presumption or inference available in any civil or criminal matter.

Sec. 3. Application. The requirements of this Act apply to all multiple-party accounts established with a financial institution after January 1, 2019 and to all single-party accounts changed to multiple-party accounts with a financial institution after January 1, 2019.

See title page for effective date.

CHAPTER 391

H.P. 1284 - L.D. 1847

An Act To Amend the State's Electronic Waste Laws

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

Sec. 1. 38 MRSA §1610, sub-§2, as amended by PL 2011, c. 250, §§2 to 4, is further amended to read:

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

~~A. "Computer monitor" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to display information from a central processing unit or the Internet. "Computer monitor" includes a digital picture frame.~~

B. "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling, treatment or disposal facility. "Consolidation facility" includes a transport vehicle owned or leased by a consolidator and used to collect covered electronic devices at collection sites in this State at a cost no greater than the per pound transportation rate for a full 40-foot trailer as approved by the department for each consolidator pursuant to the rules governing reasonable operational costs adopted under subsection 5, paragraph D, subparagraph (1).

B-1. "Consolidator" means a person that provides consolidation and handling services for electronic wastes and that operates at least one consolidation facility.

B-2. "Covered entity" means a household in this State, a business or nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) that employs 100 or fewer individuals, a primary school or a secondary school.

C. "Covered electronic device" means a ~~computer central processing unit~~, a desktop printer, a video game console, a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment; ~~or~~ other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act; or a cellular telephone subject to section 2143.

C-1. "Desktop printer" means a device weighing 100 pounds or less that prints text or illustrations on paper or 3-dimensional objects and that is designed for external use with a desktop or portable computer. "Desktop printer" includes, but is not limited to, a daisy wheel, dot matrix, inkjet, laser, LCD and LED line or thermal printer, including a device that performs other functions in addition to printing such as copying, scanning or transmitting a facsimile.

D. "Manufacturer" means a person who:

- (1) Manufactures or has manufactured a covered electronic device under its own brand or label;
- (2) Sells or has sold under its own brand or label a covered electronic device produced by other suppliers;
- (3) Imports or has imported a covered electronic device into the United States that is manufactured by a person without a presence in the United States; or
- (4) Owns a brand that it licenses or licensed to another person for use on a covered electronic device.

D-1. "Market share" means a manufacturer's national sales of a covered electronic device expressed as a percentage of the total of all manufacturers' national sales for that category of covered electronic devices.

E. "Municipal collection site" means a municipally owned solid waste transfer station or recycling center, including a facility owned by a consortium of municipalities or a facility that is under contract with a municipality or consortium of municipalities to provide solid waste management services.

G. ~~"Orphan waste" means a covered electronic device, excluding a video game console and a television, the manufacturer of which can not be identified or is no longer in business and has no successor in interest.~~

H. "Recycling" means the use of materials contained in previously manufactured goods as feedstock for new products, but not for energy recovery or energy generation by means of combustion.

I. "Recycling and dismantling facility" means a business that processes covered electronic devices for reuse and recycling.

J. "Retailer" means a person who sells or provides a platform for the sale of a covered electronic device in the State to a consumer. "Retailer" includes, but is not limited to, a manufacturer of a covered electronic device who sells directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, or any similar electronic means, but not including wholesale transactions with a distributor or other retailer.

K. ~~"Television" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to receive video programming via broadcast, cable or satellite transmission or video from surveillance or other similar cameras.~~

L. "Video game console" means an interactive entertainment computer or electronic device that produces a video display signal that can be used with a display device such as a television or computer monitor to display a video game.

Sec. 2. 38 MRSA §1610, sub-§5, as amended by PL 2011, c. 250, §§5 to 8, is further amended to read:

5. Responsibility for recycling. Municipalities, consolidators, manufacturers and the State share responsibility for the disposal of covered electronic devices as provided in this subsection.

A. Each municipality that chooses to participate in the state collection and recycling system shall ensure that ~~computer monitors, televisions, desktop printers and video game consoles~~ covered electronic devices generated as waste from covered entities within that municipality's jurisdiction are delivered to a consolidation facility in this State. A municipality may meet this requirement through collection at and transportation from a local or regional solid waste transfer station or recycling center.

cling facility, by contracting with a disposal facility to accept waste directly from the municipality's residents or through curbside pickup or other convenient collection and transportation system.

A-1. A covered entity may deliver no more than 7 covered electronic devices at one time to a municipal collection site or consolidator collection event, unless the municipal collection site or consolidator is willing to accept additional covered electronic devices.

B. A consolidator is subject to the requirements of this paragraph.

~~(1) A consolidator shall identify the manufacturer of each waste computer monitor and desktop printer delivered to a consolidation facility and identified as generated by a covered entity in this State and shall maintain an accounting of the number of waste computer monitors and desktop printers by manufacturer. By March 1st each year, a consolidator shall provide this accounting by manufacturer to the department.~~

(1-A) A consolidator shall maintain a written log of the total weight of televisions and video game consoles each type of covered electronic device delivered each month to the consolidator and identified as generated by a covered entity in the State. By March 1st each year, a consolidator shall provide this accounting to the department.

~~(2) A consolidator may perform the manufacturer identification required by subparagraph (1) at the consolidation facility or may contract for this identification and accounting service with the recycling and dismantling facility to which the covered electronic devices are shipped.~~

(3) A consolidator shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system with costs calculated for televisions on a basis proportional to the manufacturer's national market share of televisions each type of covered electronic device sold in the State multiplied by the total pounds recycled ~~and with costs calculated for video game consoles on a basis proportional to the manufacturer's national market share of video game consoles in the State multiplied by the total pounds recycled.~~ At a minimum, a consolidator shall invoice the manufacturers for the handling, transportation and recycling costs for which they are responsible under the provisions of this subsection.

~~(4) A consolidator shall transport computer monitors, televisions, desktop printers and~~

~~video game consoles covered electronic devices~~ to a recycling and dismantling facility that provides a sworn certification pursuant to paragraph C. A consolidator shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling and dismantling facility that receives covered electronic devices from the consolidator and shall provide the department with a copy of these records within 24 hours of request by the department.

C. A recycling and dismantling facility shall provide to a consolidator a sworn certification that its handling, processing, refurbishment and recycling of covered electronic devices meet guidelines for environmentally sound management published by the department.

D. ~~Computer monitor, television, desktop printer and video game console~~ Covered electronic device manufacturers are subject to the requirements of this paragraph.

~~(1) Each computer monitor manufacturer and each desktop printer manufacturer is individually responsible for handling and recycling all computer monitors and desktop printers that are produced by that manufacturer or by any business for which the manufacturer has assumed legal responsibility, that are generated as waste by covered entities in this State and that are received at consolidation facilities in this State. In addition, each computer manufacturer is responsible for a pro rata share of orphan waste computer monitors and each desktop printer manufacturer is responsible for a pro rata share of orphan waste desktop printers generated as waste by covered entities in this State and received at consolidation facilities. The manufacturers~~ Manufacturers shall pay the reasonable operational costs of the consolidator attributable to the handling of all ~~computer monitors, televisions, desktop printers and video game consoles covered electronic devices~~ received at consolidation facilities in this State, the transportation costs from the consolidation facility to a licensed recycling and dismantling facility and the costs of recycling. "Reasonable operational costs" includes the costs associated with ensuring that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. The recycling of televisions each type of covered electronic device must be funded by allocating the cost of the program among the manufacturers selling televisions covered electronic devices in the State on a basis proportional to the manufacturer's national market

share of ~~televisions~~ the type of covered electronic device. The department shall annually determine each ~~television~~ manufacturer's recycling share based on readily available national market share data. If the department determines that a ~~television~~ manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A ~~television~~ manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share of ~~televisions~~ for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the ~~television~~ manufacturers that have 1/10 of 1% or more of the market of each type of covered electronic device. ~~The recycling of video game consoles must be funded by allocating the cost of the program among the manufacturers selling video game consoles in the State on a basis proportional to the manufacturer's national market share of video game consoles. The department shall annually determine each video game console manufacturer's recycling share based on readily available national market share data. If the department determines that a video game console manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A video game console manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share of video game consoles for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the video game console manufacturers that have 1/10 of 1% or more of the market.~~

(2) Each ~~computer monitor manufacturer, television manufacturer, desktop printer manufacturer and video game console manufacturer~~ shall work cooperatively with consolidators to ensure implementation of a practical and feasible financing system. Within 90 days of receipt of an invoice, a manufacturer shall reimburse a consolidator for allowable costs incurred by that consolidator.

E. Annually by January 1st the department shall provide manufacturers of ~~computer monitors and desktop printers and consolidators with a listing of each manufacturer's pro rata share of orphan waste computer monitors and desktop printers. The department shall determine each manufacturer's pro rata share based on the best available information, including but not limited to data pro-~~

~~vided by manufacturers and consolidators and data from electronic waste collection programs in other jurisdictions within the United States. Annually, the department shall also provide manufacturers of televisions and consolidators with a listing of each television manufacturer's proportional market share responsibility for the recycling of televisions covered electronic devices for the subsequent calendar year. Annually by January 1st, the department shall also provide manufacturers of video game consoles and consolidators with a listing of each video game console manufacturer's proportional market share responsibility for the recycling of video game consoles for the subsequent calendar year.~~

Sec. 3. 38 MRSA §1610, sub-§6-A, as amended by PL 2011, c. 250, §9, is further amended to read:

6-A. Manufacturer registration. Prior to offering a covered electronic device and by ~~July~~ April 1st annually, a manufacturer that offers or has offered a ~~computer monitor or desktop printer, or offers or has offered within the preceding calendar year a television or video game console, covered electronic device~~ for sale in or into this State shall submit a registration to the department. The annual registration must include:

A. The name, contact and billing information of the manufacturer;

B. The manufacturer's brand name or names and the type of ~~televisions, video game consoles, computer monitors and desktop printers~~ covered electronic device on which each brand is used, including:

(1) All brands sold in the State in the ~~past~~ preceding calendar year; and

(2) All brands currently being sold in the State;

C. When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;

D. When a logo, mark or image is used as a label, the manufacturer must include a graphic representation of the logo, mark or image and a general description of the logo, mark or image as it appears on the manufacturer's electronic products;

E. The method or methods of sale used in the State;

F. Annual national sales data on the weight, number and type of ~~computer monitors, televisions, desktop printers and video game consoles~~ covered electronic devices sold by the manufacturer in this State over the 5 years preceding the

filing of the plan. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B;

G. The manufacturer's consolidator handling option for the next calendar year, as selected in accordance with rules adopted pursuant to subsection 10; and

H. A registration fee paid by a manufacturer as follows:

(1) Seven hundred and fifty dollars for manufacturers with less than 0.1% national market share as determined by the department based on the most recent readily available national market share data; and

(2) Three thousand dollars for all other manufacturers, ~~except that computer monitor and desktop printer manufacturers that have not marketed any covered electronic device in the current calendar year and have had less than 50 units managed by approved consolidators in the preceding 3 years are exempted from paying the fee.~~

A manufacturer's annual registration filed subsequent to its initial registration must clearly delineate any changes in information from the previous year's registration. Whenever there is any change to the information on the manufacturer's registration, the manufacturer shall submit an updated form within 14 days of the change. Registration fees collected by the department pursuant to this subsection must be deposited in the Maine Environmental Protection Fund established in section 351.

Sec. 4. 38 MRSA §1610, sub-§7, as amended by PL 2009, c. 397, §10, is further amended to read:

7. Enforcement; cost recovery. The department must enforce this section in accordance with the provisions of sections 347-A and 349. If a manufacturer fails to pay for the costs allocated to it pursuant to subsection 5, paragraph D, subparagraph (1), ~~including, for a computer monitor manufacturer and a desktop printer manufacturer, its pro rata share of costs attributable to orphan waste,~~ the department may pay a consolidator its legitimate costs from the Maine Solid Waste Management Fund established in section 2201 and seek cost recovery from the nonpaying manufacturer. Any nonpaying manufacturer is liable to the State for costs incurred by the State in an amount up to 3 times the amount incurred as a result of such failure to comply.

The Attorney General is authorized to commence a civil action against any manufacturer to recover the costs described in this subsection, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the State pursuant to this subsection must be deposited in the Maine

Solid Waste Management Fund established in section 2201.

Sec. 5. 38 MRSA §1610, sub-§10, as enacted by PL 2009, c. 397, §11, is amended to read:

10. Rulemaking. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement, administer and enforce this chapter. The rules must identify the criteria that consolidators must use to determine reasonable operational costs attributable to the handling of ~~computer monitors, video game consoles, televisions and desktop printers~~ covered electronic devices.

See title page for effective date.

CHAPTER 392

H.P. 180 - L.D. 247

An Act To Amend the Retirement Laws Pertaining to Participating Local Districts

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

Whereas, the Participating Local District Advisory Committee has recommended changes to the participating local district retirement plan in order to improve future funding levels, reduce rate volatility and protect member benefits; and

Whereas, this legislation requires the Board of Trustees of the Maine Public Employees Retirement System to adopt rules in order for the changes to take effect; and

Whereas, the changes to the participating local district retirement plan must be in effect prior to July 1, 2018 in order for the actuarial calculations used to establish plan costs for the next fiscal year to be based on the amended plan; 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. 5 MRSA §17001, sub-§13, ¶B, as amended by PL 2009, c. 274, §1, is further amended to read:

B. ~~Earnable~~ For members other than members of the Participating Local District Retirement Pro-

gram under chapters 425 and 427, "earnable compensation" does not include:

- (1) For any member who has 10 years of creditable service by July 1, 1993 or who has reached 60 years of age and has been in service for a minimum of one year immediately before that date, payment for more than 30 days of unused accumulated or accrued sick leave, payment for more than 30 days of unused vacation leave or payment for more than 30 days of a combination of both and, effective October 1, 1999, whether or not the member is in service on October 1, 1999, the 30-day limitation may not be decreased and the exclusion set out in subparagraph (2) may not be made applicable to such a member;
- (2) For any member who is not covered by subparagraph (1), payment for any unused accumulated or accrued sick leave or payment for any unused vacation leave; or
- (3) Any other payment that is not compensation for actual services rendered or that is not paid at the time the actual services are rendered.

A payment for unused sick leave or unused vacation leave may not be included as part of earnable compensation unless it is paid upon the member's last termination before the member applies for retirement benefits.

Sec. 2. 5 MRSA §17001, sub-§13, ¶B-1 is enacted to read:

B-1. "Earnable compensation" does not include any exclusion in the plan provisions adopted by rule pursuant to section 18801.

Sec. 3. 5 MRSA §18252, sub-§6, as repealed and replaced by PL 2009, c. 415, Pt. A, §5, is amended to read:

6. Restoration to service. ¶ Except as provided in section 18457-A, if any person who is the recipient of a service retirement benefit is covered by the United States Social Security Act upon being restored to service, continuation of that person's benefit is governed by the following.

- A. The person may elect to have the service retirement benefit continued during the period of time the person is restored to service and the person may not accumulate any additional service credits.
- B. The person may elect to have the service retirement benefit terminated, again become a member of the Participating Local District Retirement Program and begin contributing at the current rate.

(1) The person is entitled to accumulate additional service credits during the period of time the person is restored to service.

(2) When the person again retires, the person is entitled to receive benefits computed on the person's entire creditable service and in accordance with the law in effect at the time.

C. Upon being restored to service, the person must elect to have benefits either continued or terminated. If written notification of the person's election is not received by the executive director within 60 days of restoration to service, the person is deemed to have elected the provisions of paragraph A. The election, regardless of how it is made, is irrevocable during the period of restoration to service.

Sec. 4. 5 MRSA §18302, sub-§3 is enacted to read:

3. Employer contributions to the Participating Local District Consolidated Retirement Plan. The board may establish by rule the rate at which employers who participate in the Participating Local District Consolidated Retirement Plan in accordance with chapter 427 contribute to that plan. Rules established pursuant to this subsection are routine technical rules pursuant to chapter 375, subchapter 2-A.

Sec. 5. 5 MRSA §18356, sub-§4 is enacted to read:

4. Treatment of members of the Participating Local District Consolidated Retirement Plan covered by chapter 427. Notwithstanding the provisions of this section, for members of the Participating Local District Consolidated Retirement Plan, the plan provisions adopted by rule pursuant to section 18801 govern any service credit for unused accrued or accumulated sick leave or unused vacation leave.

Sec. 6. 5 MRSA §18407, sub-§7, as amended by PL 2013, c. 588, Pt. E, §3, is repealed and the following enacted in its place:

7. Determination of adjustment for participating local districts covered by chapter 427. The plan provisions adopted by rule pursuant to section 18801 govern any cost-of-living adjustment.

Sec. 7. 5 MRSA §18407, sub-§8, as enacted by PL 2013, c. 391, §8, is repealed.

Sec. 8. 5 MRSA §18452, sub-§3, as amended by PL 2013, c. 391, §11, is further amended to read:

3. Member with creditable service of 25 years or more. The amount of the service retirement benefit for members qualified under section 18451, subsection 3 is computed in accordance with subsection 1, except that:

A. The amount arrived at under subsection 1 is reduced by applying to that amount the percentage that a life annuity due at 60 years of age bears to the life annuity due at the age of retirement.

B. For the purpose of making the computation under paragraph A, the board-approved tables of annuities in effect at the date of the member's retirement is used.

The amount of the service retirement benefit for members qualified under section 18451-A, ~~subsection 2, paragraph C~~ is computed in accordance with subsection 1, except that ~~the benefit is reduced by 6% for each year that the member's age precedes 65 years of age~~ any benefit reduction for retiring prior to 60 years of age for members qualified under section 18451-A, subsection 1 or prior to 65 years of age for members qualified under section 18451-A, subsection 2 must be contained in the plan provisions adopted by rule pursuant to section 18801 that provide for the payment of the full actuarial cost of retiring prior to 60 years of age or 65 years of age as applicable.

Sec. 9. 5 MRSA §18457-A is enacted to read:

§18457-A. Restoration to service

The plan provisions adopted by rule pursuant to section 18801 govern the return of a retiree to employment by an employer participating in the Participating Local District Consolidated Retirement Plan.

Sec. 10. 5 MRSA §18801, first ¶, as repealed and replaced by PL 2009, c. 474, §44, is amended to read:

There is established the Participating Local District Consolidated Retirement Plan as a governmental qualified defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code and such other provisions of the Internal Revenue Code and United States Treasury regulations and other guidance as are applicable, which has the powers and privileges of a corporation. The purpose of the Participating Local District Consolidated Retirement Plan is to provide retirement allowances and other benefits under this chapter for employees of participating local districts that contract with the retirement system in accordance with section 18804. The board shall establish by rule the plan provisions of the Participating Local District Consolidated Retirement Plan ~~in accordance with section 18804.~~ Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 11. 5 MRSA §18801, sub-§3, as enacted by PL 1989, c. 811, §3, is amended to read:

3. No reduction of benefits. The level of service retirement benefits for employees of participating local districts that adopt the plan may not be reduced with relation to either benefits based upon service before adoption of the plan or benefits based upon service

after adoption of the plan. As used in this subsection, "level of service retirement benefits" means the service credit accrual rate, the number of years included in the definition of "average final compensation," the age and creditable service requirements for receiving an unreduced benefit and the basic benefit formula of years of creditable service multiplied by the service credit accrual rate and average final compensation.

Sec. 12. 5 MRSA §18804, sub-§7 is enacted to read:

7. Withdrawal from participation. The plan provisions adopted by rule pursuant to section 18801 govern the withdrawal of a local district from participation in the plan and must include withdrawal liability payments by the local district of amounts calculated in an actuarially sound manner and appropriate to protect the funding of the plan and treat members, the withdrawing local district and nonwithdrawing local districts in a fair manner.

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

Effective April 18, 2018.

CHAPTER 393

H.P. 1309 - L.D. 1877

**An Act To Expand and Clarify
the Areas Subject to Municipal
Residency Restrictions for Sex
Offenders**

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

Sec. 1. 30-A MRSA §3014, sub-§2, ¶B, as amended by PL 2013, c. 161, §1, is repealed and the following enacted in its place:

B. A municipality may prohibit residence by a sex offender up to a maximum distance of 750 feet surrounding the real property comprising:

(1) A public or private elementary, middle or secondary school;

(2) A municipally owned or state-owned park, athletic field or recreational facility that is open to the public where children are the primary users; or

(3) A municipally owned or state-owned property leased to a nonprofit organization for purposes of a park, athletic field or recreational facility that is open to the public where children are the primary users.

See title page for effective date.

**CHAPTER 394
H.P. 1314 - L.D. 1881**

**An Act To Authorize the
Treasurer of State To Facilitate
the Establishment of ABLÉ
Accounts for Qualified Persons**

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

Whereas, this legislation authorizes the Treasurer of State to establish the ABLÉ ME Savings Program to allow an individual with a disability to establish a federal tax-advantaged savings account and use the funds in that account to pay for the individual's care; and

Whereas, in anticipation of this legislation, the Treasurer of State has developed the program to comply with federal law with a partner financial institution in this State; and

Whereas, this legislation must be enacted before an individual with a disability may open an ABLÉ account in this State; 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. 5 MRSA §156 is enacted to read:

§156. Authorization to establish program

The Treasurer of State is authorized to establish in this State the ABLÉ ME Savings Program, referred to in this section as "the program," to allow an individual with a disability to establish a federal tax-advantaged savings account and use the funds in that account to pay for the individual's care. The program must comply with the requirements of the federal Achieving a Better Life Experience Act of 2014, Public Law 113-295.

The Treasurer of State may adopt routine technical rules pursuant to chapter 375, subchapter 2-A to implement the provisions of this section, including all terms and conditions of the program.

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

Effective April 18, 2018.

**CHAPTER 395
H.P. 1330 - L.D. 1897**

**An Act To Reinstate Certain
Other Special Revenue Funds
Allocations for the Maine
Commission on Indigent Legal
Services**

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

Sec. 1. Appropriations and allocations. The following appropriations and allocations are made.

**INDIGENT LEGAL SERVICES, MAINE
COMMISSION ON**

Reserve for Indigent Legal Services Z258

Initiative: Allocates funds from reimbursement of counsel fees and from conference training fees.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$0	\$793,497
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$793,497

See title page for effective date.

**CHAPTER 396
S.P. 314 - L.D. 958**

**An Act To Enact the Uniform
Emergency Volunteer Health
Practitioners Act**

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

Sec. 1. 24 MRSA §2904, sub-§1, ¶A, as enacted by PL 2003, c. 438, §2, is amended to read:

A. A licensed health care practitioner who voluntarily, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides professional services within the scope of that health care practitioner's licensure:

- (1) To a nonprofit organization;
- (2) To an agency of the State or any political subdivision of the State;
- (3) To members or recipients of services of a nonprofit organization or state or local agency;

(4) To support the State's response to a public health threat as defined in Title 22, section 801, subsection 10;

(5) To support the State's response to an extreme public health emergency as defined in Title 22, section 801, subsection 4-A; or

(6) To support the State's response to a disaster as defined in Title 37-B, section 703, subsection 2; or

Sec. 2. 24 MRSA §2904, sub-§1, ¶B, as corrected by RR 2005, c. 2, §19, is amended to read:

B. An emergency medical services person who voluntarily, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides emergency medical services within the scope of that person's licensure:

(1) To support the State's response to a public health threat as defined in Title 22, section 801, subsection 10;

(2) To support the State's response to an extreme public health emergency as defined in Title 22, section 801, subsection 4-A; or

(3) To support the State's response to a disaster as defined in Title 37-B, section 703, subsection 2; or

Sec. 3. 24 MRSA §2904, sub-§1, ¶C is enacted to read:

C. A volunteer health practitioner who provides health services or veterinary services pursuant to the Uniform Emergency Volunteer Health Practitioners Act.

Sec. 4. 24 MRSA §2904, sub-§3, ¶F is enacted to read:

F. "Volunteer health practitioner" has the same meaning as in Title 37-B, section 949-A, subsection 16.

Sec. 5. 37-B MRSA c. 16-B is enacted to read:

CHAPTER 16-B

UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT

§949. Short title

This chapter may be known and cited as "the Uniform Emergency Volunteer Health Practitioners Act."

§949-A. Definitions

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

1. Disaster relief organization. "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health services

or veterinary services provided by volunteer health practitioners as long as the entity:

A. Is designated or recognized as a provider of those emergency or disaster relief services pursuant to a disaster response and recovery plan adopted by an agency of the Federal Government or the Maine Emergency Management Agency; or

B. Regularly plans and conducts its activities in coordination with an agency of the Federal Government, the Maine Emergency Management Agency or the Department of Health and Human Services.

2. Emergency. "Emergency" means an event or condition that is an actual or imminent civil emergency or disaster or an actual or threatened epidemic or public health threat that is the subject of an emergency proclamation pursuant to section 742 or an emergency declaration pursuant to Title 22, section 802.

3. Emergency declaration. "Emergency declaration" means a declaration or proclamation of emergency issued by a person authorized to do so under the laws of this State.

4. Emergency Management Assistance Compact. "Emergency Management Assistance Compact" means the interstate compact approved by the United States Congress in Public Law 104-321 (1996) and adopted by this State in chapter 16.

5. Entity. "Entity" means a person other than an individual.

6. Health facility. "Health facility" means an entity licensed under the laws of this State or another state to provide health services or veterinary services.

7. Health practitioner. "Health practitioner" means an individual licensed under the laws of this State or another state to provide health services or veterinary services.

8. Health services. "Health services" means the provision of treatment, care, advice or guidance or other services or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

A. The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

- (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care; and
- (2) Counseling, assessment, procedures or other services;

B. The sale or dispensing of a drug, a device, equipment or another item to an individual in accordance with a prescription; and

C. Funeral, cremation, cemetery or other mortuary services.

9. Host entity. "Host entity" means an entity operating in this State that uses volunteer health practitioners to respond to an emergency.

10. International Emergency Management Assistance Compact. "International Emergency Management Assistance Compact" means the mutual assistance compact described in chapter 16-A.

11. License. "License" means authorization by a state to provide health services or veterinary services that are unlawful without the authorization. "License" includes authorization under the laws of this State to an individual to provide health services or veterinary services based upon a national certification issued by a public or private entity.

12. Person. "Person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

13. Scope of practice. "Scope of practice" means the extent of the authorization to provide health services or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.

14. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States or a Canadian province that is a party to the International Emergency Management Assistance Compact.

15. Veterinary services. "Veterinary services" means the provision of treatment, care, advice or guidance or other services or supplies related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

A. Diagnosis, treatment or prevention of an animal disease, injury or other physical or mental condition by the prescription, administration or dispensing of vaccine, medicine, surgery or therapy;

B. Use of a procedure for reproductive management; and

C. Monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

16. Volunteer health practitioner. "Volunteer health practitioner" means a health practitioner who

provides health services or veterinary services while an emergency declaration is in effect, whether or not the practitioner receives compensation for those services. "Volunteer health practitioner" does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in this State, unless the practitioner is not a resident of this State and is employed by a disaster relief organization providing services in this State while an emergency declaration is in effect.

§949-B. Applicability to volunteer health practitioners

This chapter applies only to volunteer health practitioners who are registered with a registration system that complies with section 949-D and who provide health services or veterinary services in this State for a host entity while an emergency declaration is in effect.

§949-C. Regulation of services during emergency

1. Order regulating practice. The Department of Health and Human Services, in coordination with the Maine Emergency Management Agency, may issue an order that limits, restricts or otherwise regulates the following while an emergency declaration is in effect:

A. The duration of practice by volunteer health practitioners;

B. The geographical areas in which volunteer health practitioners may practice;

C. The types of volunteer health practitioners who may practice; and

D. Any other matters necessary to coordinate effectively the provision of health services or veterinary services during the emergency.

2. Inapplicability of Maine Administrative Procedure Act. Notwithstanding the Maine Administrative Procedure Act, an order issued pursuant to subsection 1 may take effect immediately, without notice or comment, and is legally enforceable.

3. Duties of host entity. A host entity that uses volunteer health practitioners to provide health services or veterinary services in this State shall:

A. Consult and coordinate its activities with the Department of Health and Human Services or the Maine Emergency Management Agency to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

B. Comply with other laws relating to the management of emergency health services or veterinary services.

§949-D. Volunteer health practitioner registration systems

1. Registration system requirements. To qualify as a volunteer health practitioner registration system, a system must:

A. Accept applications for the registration of volunteer health practitioners before or during an emergency;

B. Include information about the licensure and good standing of health practitioners that is accessible by authorized persons;

C. Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this chapter; and

D. Meet one of the following conditions:

(1) Be an emergency system for advance registration of volunteer health care professionals established by a state and funded through the federal Department of Health and Human Services under Section 319I of the federal Public Health Service Act, 42 United States Code, Section 247d-7b (2017);

(2) Be a local unit consisting of trained and equipped emergency response, public health and medical personnel formed pursuant to Section 2801 of the federal Public Health Service Act, 42 United States Code, Section 300hh (2017);

(3) Be operated by a:

(a) Disaster relief organization;

(b) Licensing board;

(c) National or regional association of licensing boards or health practitioners;

(d) Health facility that provides comprehensive inpatient and outpatient health care services, including a tertiary care hospital; or

(e) Governmental entity; or

(4) Be designated by the Department of Health and Human Services, in coordination with the Maine Emergency Management Agency, as a registration system for the purposes of this chapter.

2. Confirmation of registration. While an emergency declaration is in effect, the Department of Health and Human Services or the Maine Emergency Management Agency, a person authorized to act on behalf of the Department of Health and Human Services or the Maine Emergency Management Agency or a host entity may confirm whether volunteer health

practitioners utilized in this State are registered with a registration system that complies with subsection 1. Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

3. Notification by registration system. Upon request of a person in this State authorized under subsection 2, or a similarly authorized person in another state, a registration system located in this State shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

4. Host entity discretion in selecting volunteers. A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

§949-E. Recognition of volunteer health practitioners licensed in other states**1. Authority to practice during emergency.**

While an emergency declaration is in effect, a volunteer health practitioner registered with a registration system that complies with section 949-D and licensed and in good standing in the state upon which the practitioner's registration is based may practice in this State to the extent authorized by this chapter as if the practitioner were licensed in this State.

2. Disqualification based on professional discipline. A volunteer health practitioner qualified under subsection 1 is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked or subject to an agency order limiting or restricting practice privileges or has been voluntarily terminated under threat of sanction.

§949-F. No effect on credentialing and privileging

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

A. "Credentialing" means obtaining, verifying and assessing the qualifications of a health practitioner to provide treatment, care or services in or for a health facility.

B. "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status and specialized skill.

2. Health facility autonomy over credentialing and privileging. This chapter does not affect creden-

tialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

§949-G. Provision of volunteer health services or veterinary services; licensee discipline

1. Applicability of Maine scope of practice laws. Subject to subsections 2 and 3, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts or other laws of this State.

2. Applicability of scope of practice laws of state where practitioner is licensed. Except as otherwise provided in subsection 3, this chapter does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this State would be permitted to provide the services.

3. Order modifying or limiting services. The Governor or the Governor's designee may issue an order that modifies or restricts the health services or veterinary services that volunteer health practitioners may provide pursuant to this chapter. Notwithstanding the Maine Administrative Procedure Act, an order issued pursuant to this subsection may take effect immediately, without notice or comment, and is legally enforceable.

4. Additional restrictions imposed by host entity. A host entity may restrict the health services or veterinary services that a volunteer health practitioner may provide pursuant to this chapter.

5. Unauthorized practice. A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification or restriction under this section or that a similarly licensed practitioner in this State would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification or restriction or that a similarly licensed practitioner in this State would not be permitted to provide a service if:

A. The practitioner knows the limitation, modification or restriction exists or that a similarly licensed practitioner in this State would not be permitted to provide the service; or

B. From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification or restriction exists or that a similarly licensed practitioner in this State would not be permitted to provide the service.

6. Volunteer health practitioner discipline. In addition to the authority granted by law of this State other than this chapter to regulate the conduct of

health practitioners, a licensing board or other disciplinary authority in this State:

A. May discipline a health practitioner licensed in this State for conduct outside of this State in response to an out-of-state emergency;

B. May discipline a health practitioner not licensed in this State for conduct in this State in response to an in-state emergency; and

C. Shall report any discipline imposed upon a health practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

7. Factors to be considered by disciplinary authority. In determining whether to impose discipline pursuant to subsection 6, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the health practitioner's scope of practice, education, training, experience and specialized skill.

§949-H. Relation to other laws

1. Other laws unaffected. This chapter does not limit the rights, privileges or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided in subsection 2, this chapter does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact or the International Emergency Management Assistance Compact.

2. Exceptions; Emergency Management Assistance Compact and International Emergency Management Assistance Compact. The Maine Emergency Management Agency, pursuant to section 784-A, the Emergency Management Assistance Compact and the International Emergency Management Assistance Compact, may incorporate into the emergency forces of this State volunteer health practitioners who are not officers or employees of this State, a political subdivision of this State or a municipality or other local government within this State.

§949-I. Regulatory authority

The Department of Health and Human Services may adopt rules to implement this chapter. In doing so, the Department of Health and Human Services shall consult with and consider the recommendations of the Maine Emergency Management Agency and shall also consult with and consider rules adopted by similarly empowered agencies in other states to promote uniformity of application of this chapter and make the emergency response systems in the various states reasonably compatible. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

§949-J. Limitations on civil liability for volunteer health practitioners

A volunteer health practitioner who provides health services or veterinary services in accordance with this chapter is immune from liability for injury or death arising from the provision of those services to the extent provided in Title 24, section 2904.

§949-K. Uniformity of application and construction

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

See title page for effective date.

CHAPTER 397

S.P. 690 - L.D. 1838

An Act To Include in the Crime of Harassment by Telephone or by Electronic Communication Device the Distribution of Certain Photographic Images and Videos

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

Sec. 1. 17-A MRSA §506, as amended by PL 2011, c. 464, §14 and affected by §30, is further amended to read:

§506. Harassment by telephone or by electronic communication device

1. A person is guilty of harassment by telephone or by electronic communication device if:

A. By means of telephone or electronic communication device the person makes any comment, request, suggestion or proposal that is, in fact, offensively coarse or obscene, without the consent of the person called or contacted. Violation of this paragraph is a Class E crime;

A-1. By means of telephone or electronic communication device the person, with the intent to cause affront or alarm or for the purpose of arousing or gratifying sexual desire, sends an image or video of a sexual act as defined in section 251, subsection 1, paragraph C or of the actor's or another person's genitals and:

(1) The person called or contacted is in fact under 14 years of age;

(2) The person called or contacted is in fact 14 or 15 years of age and the actor is at least

5 years older than the person called or contacted; or

(3) The person called or contacted suffers from a mental disability that is reasonably apparent or known to the actor.

Violation of this paragraph is a Class D crime;

A-2. By means of telephone or electronic communication device the person sends an image or a video of a sexual act as defined in section 251, subsection 1, paragraph C or of the actor's or another person's genitals without the consent of the person called or contacted after the person called or contacted has notified the actor, in writing or otherwise, that the person does not consent to receiving such images or videos. Violation of this paragraph is a Class E crime;

B. The person makes a telephone call or makes a call or contact by means of an electronic communication device, whether or not oral or written conversation ensues, without disclosing the person's identity and with the intent to annoy, abuse, threaten or harass any person at the called or contacted number or account. Violation of this paragraph is a Class E crime;

C. The person makes or causes the telephone or electronic communication device of another repeatedly or continuously to ring or activate or receive data, with the intent to harass any person at the called or contacted number or account. Violation of this paragraph is a Class E crime;

D. The person makes repeated telephone calls or repeated calls or contacts by means of an electronic communication device, during which oral or written conversation ensues, with the intent to harass any person at the called or contacted number or account. Violation of this paragraph is a Class E crime; or

E. The person knowingly permits any telephone or electronic communication device under the person's control to be used for any purpose prohibited by this section. Violation of this paragraph is a Class E crime.

2. The crime defined in this section may be prosecuted and punished in the county in which the defendant was located when the defendant used the telephone or electronic communication device, or in the county in which the telephone called or made to ring or the electronic communication device called or made to ring or be activated or receive data by the defendant was located.

2-A. As used in this section, "electronic communication device" means any electronic or digital product that communicates at a distance by electronic transmission impulses or by fiber optics, including any software capable of sending and receiving communi-

cation, allowing a person to electronically engage in the conduct prohibited under this section.

~~3. Harassment by telephone or by electronic communication device is a Class E crime.~~

See title page for effective date.

CHAPTER 398

S.P. 692 - L.D. 1840

**An Act To Revise the
Municipal Consolidation
Referendum Process**

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

Sec. 1. 30-A MRSA §2152, sub-§1, ¶B, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

B. Be signed by a number of voters of the municipality equal to at least 10% of the voters of that municipality total number of votes cast in that municipality in the last gubernatorial election, except that only 1,000 signatures are necessary in municipalities of 10,000 or more voters;

(1) In municipalities with 10,000 or more votes cast in the last gubernatorial election, 1,000 signatures are required unless the municipal charter requires an amount greater than 1,000; and

(2) When a petition is subject to section 2155;

Sec. 2. 30-A MRSA §2152, sub-§1-A is enacted to read:

1-A. Referendum on forming joint charter commission. If a petition is filed pursuant to subsection 1, the municipal officers shall call and conduct a referendum to determine the willingness of the voters of the municipality to form a joint charter commission with the municipality or municipalities named in the petition. The referendum must be held at the next scheduled regular election that is held at least 90 days after the petition is filed. The question to be voted on at the referendum must be in substantially the following form: "Do you favor forming a joint charter commission to draft a consolidation agreement for the purpose of consolidating with _____ (municipality or municipalities named in the petition)?" The consolidation agreement is not final unless approved by the voters of each municipality.

Sec. 3. 30-A MRSA §2152, sub-§2, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106

and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

2. Joint charter commission. If a petition is filed as required under subsection 1 and a majority of those casting ballots pursuant to subsection 1-A approve the referendum question in each municipality or if a majority of municipal officers vote to hold elections for a joint charter commission under section 2155, the 3 members of a joint charter commission shall must be elected at the next special or regular election in the manner provided for the election of municipal officers. The election of members by 2 or more municipalities authorizes the commission to draft the consolidation agreement. If a municipality does not elect members, it may not participate in the consolidation.

Sec. 4. 30-A MRSA §2155, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§2155. Limitation

If the voters of a municipality reject a consolidation agreement, that municipality may not be a party to any consolidation agreement for 3 6 years after the date of the rejection, except when a number of voters equal to at least 30% of the qualified voters have requested an agreement by signing total number of votes cast in that municipality in the last gubernatorial election file a petition under section 2152, subsection 1 or when a majority of the municipal officers in each municipality proposed for consolidation in the rejected consolidation agreement vote to hold municipal elections to elect members of a joint charter commission in accordance with section 2152, subsection 2 to draft a consolidation agreement.

See title page for effective date.

CHAPTER 399

H.P. 1207 - L.D. 1755

**An Act To Provide a Sales Tax
Exemption for Nonprofit
Heating Assistance
Organizations**

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

Sec. 1. 36 MRSA §1760, sub-§102 is enacted to read:

102. Nonprofit heating assistance organizations. Sales to organizations that have been determined by the United States Internal Revenue Service to be exempt from taxation under Section 501(c)(3) of the Code and whose primary purpose is to provide

residential heating assistance to low-income individuals.

Sec. 2. Effective date. This Act takes effect October 1, 2018.

Effective October 1, 2018.

**CHAPTER 400
S.P. 621 - L.D. 1685**

**An Act To Create The Barbara
Bush Children's Hospital
Registration Plate**

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

Sec. 1. 29-A MRSA §456-H is enacted to read:

**§456-H. The Barbara Bush Children's Hospital
registration plates**

1. The Barbara Bush Children's Hospital registration plates. The Secretary of State, upon receiving an application and evidence of payment of the excise tax required by Title 36, section 1482, the annual motor vehicle registration fee required by section 501 or 504 and the contribution provided for in subsection 3, shall issue a registration certificate and a set of The Barbara Bush Children's Hospital special registration plates to be used in lieu of regular registration plates.

2. Design; review; vanity plates. The Secretary of State, in consultation with The Barbara Bush Children's Hospital, shall determine a design for The Barbara Bush Children's Hospital special registration plates. The joint standing committee of the Legislature having jurisdiction over transportation matters shall review the final design prior to manufacture of the plates. The Secretary of State shall issue upon request The Barbara Bush Children's Hospital special registration plates that are also vanity plates. The Barbara Bush Children's Hospital special registration plates are issued in accordance with the provisions of this section and section 453.

3. Contribution; credit to funds. In addition to the regular motor vehicle registration fee prescribed by law for the particular class of vehicle registered, the initial contribution for The Barbara Bush Children's Hospital special registration plates is \$20, which must be deposited with the Treasurer of State and credited as follows:

- A. Ten dollars to The Barbara Bush Children's Hospital to support ongoing pediatric programs;
- B. Nine dollars to the Highway Fund for administrative and production costs; and

C. One dollar to the Specialty License Plate Fund established under section 469.

4. Renewal fee. In addition to the regular motor vehicle registration fee prescribed by law, the annual renewal contribution for The Barbara Bush Children's Hospital special registration plates is \$15, which must be deposited with the Treasurer of State and credited as follows:

- A. Ten dollars to The Barbara Bush Children's Hospital to support ongoing pediatric programs;
- B. Four dollars to the Highway Fund for administrative and production costs; and
- C. One dollar to the Specialty License Plate Fund established under section 469.

5. Payment for costs associated with the production and issuance of the first 2,000 plates. The sponsor of The Barbara Bush Children's Hospital special registration plates shall provide \$50,000 to the Secretary of State for costs associated with the production and issuance of The Barbara Bush Children's Hospital registration plates. The Secretary of State shall deposit these funds in the Specialty License Plate Fund established under section 469. In accordance with section 468, subsection 3-A, the Secretary of State shall provide 2,000 credit receipts to the sponsor to provide to each supporter who contributed \$25. A credit receipt may be used only to obtain one set of special registration plates.

6. Transfer of fees. On a quarterly basis, the Secretary of State shall transfer the revenue from the issuance and renewal of The Barbara Bush Children's Hospital special registration plates to the Treasurer of State for deposit and crediting pursuant to subsections 3 and 4.

7. Duplicate plates prohibited. The Secretary of State shall issue The Barbara Bush Children's Hospital special registration plate in a unique 3-number and 3-letter combination sequence. Vanity plates may not duplicate vanity plates issued in another class of plate.

8. Date of first issue. The Secretary of State shall issue the first The Barbara Bush Children's Hospital special registration plate by October 1, 2018.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

**SECRETARY OF STATE, DEPARTMENT OF
Administration - Motor Vehicles 0077**

Initiative: Allocates funds for the costs of manufacturing The Barbara Bush Children's Hospital specialty registration plates.

HIGHWAY FUND	2017-18	2018-19
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All Other	\$0	\$51,962
	\$0	\$51,962
HIGHWAY FUND TOTAL		

See title page for effective date.

**CHAPTER 401
S.P. 721 - L.D. 1888**

**An Act To Amend the
Workers' Compensation Laws
Governing Affiliated
Self-insurance Groups**

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

Sec. 1. 39-A MRSA §403, sub-§3, as amended by PL 2011, c. 98, §1 and c. 180, §1, is further amended to read:

3. Proof of solvency and financial ability to pay; trust. The employer may comply with this section by furnishing satisfactory proof to the Superintendent of Insurance of solvency and financial ability to pay the compensation and benefits, and depositing cash, satisfactory securities, irrevocable standby letters of credit issued by a qualified financial institution or a surety bond with the superintendent, in such sum as the superintendent may determine pursuant to subsection 8, the Treasurer of State to be listed as beneficiary of the bond or the irrevocable standby letter of credit and the bond or the irrevocable standby letter of credit to be conditional upon the faithful performance of this Act relating to the payment of compensation and benefits to any injured employee. In case of cash or securities being deposited, or drawn on a surety bond or letter of credit, the cash or securities must be placed in an account at interest by the Treasurer of State, and the accumulation of interest on the cash or securities so deposited must be credited to the account and may not be paid to the employer to the extent that the interest is required to secure the employer's self-insurance obligations, including the amount needed to support any present value discounting in the determination of the amount of the deposit. Any security deposit must be held by the Treasurer of State in trust for the benefit of the self-insurer's employees for the purposes of making payments under this Act. If the superintendent determines that the self-insurer has experienced a deterioration in financial condition that adversely affects the self-insurer's ability to pay obligations under this Act, the security amount may be in excess of the minimum amount required by this Title.

⚭ Except as provided in subsection 5, paragraph A-1, a self-insurer may, with the approval of the Superintendent of Insurance, use the following types of secu-

rity to satisfy the self-insurer's responsibility to post security required by the superintendent: a surety bond; an irrevocable standby letter of credit; cash deposits and acceptable securities; and an actuarially determined fully funded trust. For purposes of this section, "tangible net worth" means equity less assets that have no physical existence and depend on expected future benefits for their ascribed value. Unless disapproved by the superintendent pursuant to paragraph C, subparagraphs (5) and (6), a group self-insurer that maintains a trust actuarially funded to the confidence level required by the superintendent may use an irrevocable standby letter of credit as follows: only in an amount not greater than the difference between the funding to the required confidence level and funding to the confidence level reduced by 10 percentage points; only as long as the trust assets are not used as collateral for the letter of credit; and only as long as the value of trust assets, excluding the value of the letter of credit, is at least equal to the present value, evaluated to the 65% confidence level, of ultimate incurred claims, claims settlement costs and, if determined necessary by the superintendent, administrative costs.

A. ~~An individual~~ A self-insurer providing an irrevocable standby letter of credit as security shall file with the Superintendent of Insurance a letter of credit, on a form approved by the superintendent, copies of any agreements or other documents establishing the terms and conditions of the employer's or group's reimbursement obligations to the financial institution issuing the letter of credit, together with copies of any required security agreements, mortgages or other agreements or documents granting security for the employer's or group's reimbursement obligations and any other agreements that contain conditions, restrictions or limitations of any kind upon the employer or group, the superintendent or the Treasurer of State. The form of letter of credit approved by the superintendent must include, but is not limited to, all terms specifically required by this subsection and all terms reasonably required to secure the payment of compensation and benefits to claimants as required under this Act.

In order to issue an irrevocable standby letter of credit as security under this paragraph, a financial institution or its parent company must either:

- (1) Maintain a long-term unsecured debt rating of at least A by either Moody's Investors Service, Inc. or Standard and Poor's Corporation;
- (2) Maintain a short-term commercial paper rating within the 3 highest categories established by Moody's Investors Service, Inc. or Standard and Poor's Corporation; or
- (3) Be certified in writing by the Superintendent of Financial Institutions to be well capi-

talized and well managed in accordance with the criteria set forth in Title 9-B, section 446-A, subsections 1 and 2. The Superintendent of Insurance shall keep the certification confidential, except from the subject financial institution, in accordance with Title 9-B, section 226.

The Superintendent of Insurance may adopt rules to establish additional qualifications for financial institutions issuing irrevocable standby letters of credit. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

The irrevocable standby letter of credit must be the individual obligation of the issuing financial institution, may not be subject to any agreement, condition, qualification or defense between the financial institution and the employer or group and may not in any way be contingent on reimbursement by the employer or group. If the rating of an issuing financial institution that has issued an irrevocable standby letter of credit pursuant to this section falls below the required standard, the employer or group shall obtain a new irrevocable standby letter of credit from a qualified financial institution or shall provide other eligible security of equal value approved by the Superintendent of Insurance. The irrevocable standby letter of credit is automatically extended for one year from the date of expiration unless, 90 days prior to any expiration date, the issuing financial institution notifies the Superintendent of Insurance that the financial institution elects not to renew the irrevocable standby letter of credit.

An irrevocable standby letter of credit that has been issued by a qualified financial institution and accepted by the Superintendent of Insurance binds the issuing financial institution to pay one or more drafts drawn by the Treasurer of State, as directed by the superintendent, as long as the draft does not exceed the total amount of the irrevocable standby letter of credit. Any draft presented by the Treasurer of State, as directed by the superintendent, must be promptly honored if accompanied by the certification of the superintendent that any obligation under this chapter has not been paid when due or that a proceeding in bankruptcy has been initiated by or with respect to the employer or group in a court of competent jurisdiction.

If the Superintendent of Insurance certifies that the superintendent has been notified by the issuing financial institution that the irrevocable standby letter of credit expires by its terms in 30 days or less and that the irrevocable standby letter of credit was not replaced within 15 days after that notice to the superintendent by other eligible secu-

rity of equal value approved by the superintendent, then the financial institution must remit within 15 days the full amount of the irrevocable letter of credit to the Treasurer of State without further certification.

Any proceeds from a draw on such an irrevocable standby letter of credit by the Treasurer of State, as directed by the Superintendent of Insurance, must be held by the Treasurer of State on behalf of workers' compensation claimants to secure payment of claims until either the superintendent authorizes the Treasurer of State to release those proceeds to the employer or group upon provision by the employer or group of replacement security adequate to meet the requirements for security set by the superintendent or the superintendent directs distribution of the proceeds in accordance with this Title.

To the extent not inconsistent with state law, the letter of credit is subject to and governed by the International Standby Practices 1998 or successor practices governing standby letters of credit duly adopted by the International Chamber of Commerce. If any legal proceedings are initiated with respect to payment of the letter of credit, those proceedings are subject to the State's courts and law.

B. The Superintendent of Insurance shall prescribe the form of the surety bond that may be used to satisfy, in whole or in part, the self-insurer's responsibility under this section to post security. The bond must be continuous, be subject to nonrenewal only upon not less than 60 days' notice to the superintendent, cover payment of all present and future liabilities incurred under this Act while the bond is in force and cover payments that become due while the bond is in force that are attributable to injuries incurred in prior periods and otherwise unsecured by cash, irrevocable standby letters of credit or acceptable securities. A bond must be held until all payments secured by the bond have been made or until the bond has been replaced by other eligible security approved by the superintendent that covers all outstanding liabilities. Payments under the bond are due within 30 days after notice has been given to the surety by the board that the principal has failed to make a payment required under the terms of an award, agreement or governing law. A trust established to satisfy the requirements of this section may not be funded by a surety bond.

C. A self-insurer may establish an actuarially determined fully funded trust, funded at a level sufficient to discharge those obligations incurred by the employer pursuant to this Act as they become due and payable from time to time, as long as the Superintendent of Insurance requires that the

value of trust assets be at least equal to the present value of ultimate expected incurred claims and claims settlement costs, plus required safety margins and, if determined necessary by the superintendent, administrative costs for the operation of the plan of self-insurance. For the purpose of determining whether ~~an~~ a group self-insurer's actuarially determined fully funded trust has a surplus of funds in excess of that required by this subsection, the superintendent shall consider, based upon the group's audit for all completed plan years, only the following assets held outside the trust account: cash up to \$10,000; accounts receivable, limited to amounts collected and deposited in the trust account by the date of the surplus distribution; accrued interest on trust account assets that will be collected and deposited in the trust account within 6 months from the date of the surplus determination; tangible assets that will be converted to cash and deposited in the trust account prior to the distribution date of any surplus; and a letter of credit to be used to partially fund the trust to the extent allowed under this section and rules adopted by the superintendent, as supported in the actuarial review. The superintendent shall consider cash held outside the trust account in excess of \$10,000 if the self-insurer provides, to the superintendent's satisfaction, documentation regarding why the money is being held outside the trust account. An actuarially determined fully funded trust must be funded as follows, as determined by the superintendent.

(1) For individual and group self-insurers, the amount of security must be determined based upon an actuarial review. The actuarial review must take into consideration the use by a group self-insurer of any irrevocable standby letter of credit. Except as provided in subparagraph (3), initial funding for each plan year must be maintained at the 90% or higher confidence level. Funding after the completion of the initial plan year may be established no lower than the 75% confidence level if the following has occurred:

- (a) A year considered for reduction is completed;
- (b) The supporting actuarial review includes an evaluation of the completed year experience with claims evaluated not less than 6 months from the end of the plan year, or in the case of a group self-insurer in existence for at least 36 months, not less than 4 months from the end of the plan year; and
- (c) For individual self-insurers, prior approval from the superintendent is obtained.

For the purposes of determining the confidence level, all completed years at the same confidence level may be aggregated. For individual self-insurers, funds may not be released from the trust or transferred between years except as approved by the superintendent. The governing body of a group self-insurer may at any time declare a surplus of funds above the required confidence level, but may only release funds after the completion of any plan year. The superintendent may request information regarding any such declaration. Any distribution of surplus must be based upon an actuarial review of all outstanding obligations for all completed plan years, an audited financial statement of the group for all completed plan years and a surplus distribution worksheet for all completed plan years on a form approved by the superintendent. The group self-insurer must provide the required information within 10 days after the distribution. Any surplus declared or distributed pursuant to this paragraph is subject to adjustment after review by the superintendent within 60 days of the receipt of the required information. Any deficit below the required confidence level, as determined by the superintendent, that results from a distribution under this paragraph must be funded within 45 days from the date of the notice by the superintendent.

(2) A group self-insurer may elect to fund at a higher confidence level through the use of cash, marketable securities or reinsurance. If a member of a group self-insurer terminates membership in the group for any reason, that member shall fund the member's proportionate share of the liabilities and obligations of the trust to the 95% confidence level. If for any reason the departing member fails to fund the member's proportionate share of the trust's exposure to the 95% level of confidence, the trust is responsible for that member's liabilities and obligations to the trust. If the superintendent finds that a material risk to the trust's ability to satisfy its liabilities and obligations in full exists due to the failure of one or more departing members to fund the departing members' proportionate share of those liabilities and obligations to the 95% confidence level or due to the failure of the group trust to enforce the funding requirement, the superintendent shall consider the unfunded share of the trust's exposure when approving a determination of a surplus or deficit in the trust.

(3) Subject to prior approval by the superintendent in accordance with subparagraph (5), a self-insurer that has successfully maintained

an actuarially determined fully funded trust for a period of 5 or more consecutive years may fund all years, including the prospective fund year, at the 75% or higher confidence level in the aggregate and a group self-insurer that has successfully maintained an actuarially determined fully funded trust for a period of 10 or more consecutive years may fund all years, including the prospective fund year, at the 65% or higher confidence level in the aggregate.

(4) Trust assets must consist of cash or marketable securities of a type and risk character as specified in subsection 9. The trustee shall submit a report to the superintendent not less frequently than quarterly that lists the assets comprising the corpus of the trust, including a statement of their market value and the investment activity during the period covered by the report. The trust must be established and maintained subject to the condition that trust assets may not be transferred or revert in any manner to the employer except to the extent that the superintendent finds that the value of the trust assets exceeds the present value of incurred claims and claims settlement costs with an actuarially indicated margin for future loss development. In all other respects, the trust instrument, including terms for certification, funding, designation of trustee and payout, must be as approved by the superintendent, except that the value of the trust account must be actuarially calculated at least annually by a casualty actuary who is a member of the American Academy of Actuaries and adjusted to the required level of funding.

(5) In determining whether a self-insurer that maintains an actuarially determined fully funded trust qualifies for a reduction in the required confidence level pursuant to subparagraph (1) or (3) or is subject to an enhanced confidence level pursuant to subparagraph (6), the superintendent shall consider the financial condition of the self-insurer in relation to the potential workers' compensation liabilities. The factors the superintendent may consider include the self-insurer's liquidity, leverage, tangible net worth, size and net income. For group self-insurers, the superintendent's review must be based on the aggregate financial condition of the group members. At the request of the superintendent, a group self-insurer shall report relevant financial information, on a form prescribed by the superintendent, at such intervals as the superintendent directs. The superintendent may establish additional review criteria or proce-

dures by rule. Rules adopted pursuant to this subparagraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(6) If the superintendent determines, based on an evaluation of a self-insurer's financial condition pursuant to subparagraph (5), that the confidence level at which the self-insurer has been authorized to fund its trust is not sufficient to provide adequate security for the self-insurer's reasonably anticipated potential workers' compensation liabilities, the superintendent shall make a determination of the appropriate confidence level and order the self-insurer to take prompt action to increase funding to that level within 60 days.

D. Notwithstanding any provision of this chapter, authorization to self-insure may not be conditioned on a bond or security deposit that is in excess of \$50,000 for the State, the University of Maine System or any county, city or town with a state-assessed valuation equal to or in excess of \$300,000,000 and either a bond rating equal to or in excess of the 2nd highest standard as set by a national bond rating agency or a net worth equal to or in excess of \$35,000,000. If a county, city or town that is a self-insurer relies upon a bond rating to qualify under this paragraph, it shall value or cause to be valued its unpaid workers' compensation claims pursuant to sound accepted actuarial principles. This value must be incorporated in the annual audit of the county, city or town, together with disclosure of funds appropriated to discharge incurred claims expenses.

E. In consideration of a self-insuring entity's application for authorization to operate a plan of self-insurance, the Superintendent of Insurance may require or permit an applicant to employ valid risk transfer by the utilization of primary reinsurance, subject to the provisions of subsection 8. Standards respecting the application of reinsurance must be contained in a rule adopted by the superintendent pursuant to the Maine Administrative Procedure Act. Reinsurance must be defined as insurance covering workers' compensation exposures in excess of risk retained by a self-insurer.

F. An employer may be eligible for approved self-insurance status pursuant to this Act if the employer submits a written guarantee of the obligations incurred pursuant to this Act, the guarantee to be issued by a United States or Canadian corporation that is a member of an affiliated group of which the employer is a member, and which corporation is solvent and demonstrates an ability to pay the compensation and benefits, and the guarantee is in a form acceptable to the Superintendent of Insurance. The guarantor shall provide

audited annual financial statements and such other information as the superintendent may require, including quarterly financial statements, and the employer shall provide a cash deposit, satisfactory securities, irrevocable standby letters of credit issued by a qualified financial institution or a surety bond as otherwise required by this Act in an amount not less than \$100,000. The guarantor is deemed to have submitted to the jurisdiction of the board and the courts of this State for purposes of enforcing the guarantee. The guarantor, in all respects, is bound by and subject to the orders, findings, decisions or awards rendered against the employer for payment of compensation and any penalties or forfeitures provided under this Act. The superintendent, following hearing, may revoke the self-insured status of the employer if at any time the assets of the guarantor become impaired or encumbered or are otherwise found to be inadequate to support the guarantee.

G. A subsidiary employer may be eligible for approved self-insurance status pursuant to this Act if: the subsidiary employer files an application jointly with a qualified parent corporation that has direct ownership of a majority voting interest of the subsidiary employer; the parent corporation and subsidiary employer submit an irrevocable contract of assignment, on a form approved by the Superintendent of Insurance, of the subsidiary employer's obligations incurred pursuant to this Act; the parent corporation is solvent and demonstrates an ability to pay the compensation and benefits of the subsidiary employer; and the subsidiary employer meets all other requirements for application and qualification as a self-insurer under this chapter and under any applicable rules adopted by the superintendent. If the parent corporation is not a United States corporation, the superintendent may, in the superintendent's sole discretion, establish the conditions of any approval of the foreign parent corporation or deny the application of the foreign parent corporation. As part of its application for approval, a foreign parent corporation must provide the following information to the superintendent: evidence that its country of domicile has substantially similar laws with respect to submission to the jurisdiction of the board and the courts of this State for the purposes of payment of workers' compensation claims of the subsidiary employer; audited financial statements, as otherwise required by this Act, prepared in the English language by a certified public accountant licensed in a state in the United States in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants; and security, as otherwise required by the Act, in United States currency. The irrevocable contract of assignment and application must be signed by a

duly authorized officer of each corporation and the application must include a board of directors' resolution from each entity as evidence of each officer's authority to enter into the contract. The superintendent may determine the subsidiary employer's eligibility for self-insurance authority and the amount of required security based upon the parent corporation's consolidated financial statement, as long as the employer complies with paragraph H. A subsidiary employer currently authorized to self-insure need not pay the application fee required of a new applicant in order to file an application to qualify under this subsection, but the subsidiary employer and parent corporation must provide all information required under this subsection as if they were a new applicant. Once the subsidiary employer becomes authorized to self-insure under this section, the parent corporation assumes liability for all prior workers' compensation liabilities incurred by the subsidiary employer during the period of self-insurance prior to the date of authorization under this subsection, unless the subsidiary employer files an alternative plan approved by the superintendent. The parent corporation and the subsidiary employer must both be named on the certificate of authorization for self-insurance authority. Upon issuance of a certificate of authorization pursuant to this subsection, the following applies.

(1) The parent corporation is deemed to have submitted to the jurisdiction of the board and the courts of the State for the purposes of payment of workers' compensation claims of the subsidiary employer and is deemed to have submitted to the jurisdiction of the superintendent for purposes of implementation of this Act. The parent corporation, in all respects, is bound by and subject to all orders, findings, decisions or awards rendered against the subsidiary employer for payment of compensation and any penalties or forfeitures provided under this Act.

(2) A subsidiary employer authorized under this subsection and the parent corporation are considered one employer for the purposes of membership in the Maine Self-Insurance Guarantee Association. In the event of termination, transfer, insolvency, dissolution or bankruptcy of a subsidiary employer qualifying under this subsection, the parent corporation assumes all assessment obligations of the subsidiary employer for its period of self-insurance and is not considered a new member of the association.

(3) If the subsidiary employer fails for any reason to pay compensation and benefits as required under this Act, the parent corporation stands in the place of the subsidiary em-

employer and is deemed to be the employer, subject to all requirements and provisions of this Act. For the purposes of payment of benefits and compensation under this Act, an employee of the subsidiary employer is deemed to be concurrently employed by both corporations. Concerning notification of injury to an employee of the subsidiary employer, notice to or knowledge of the occurrence of the injury on the part of the subsidiary employer is deemed notice or knowledge on the part of the parent corporation. The transfer, insolvency, dissolution or bankruptcy of a subsidiary employer qualifying under this subsection does not relieve the parent corporation from payment of compensation for injuries or death sustained by an employee during the time the subsidiary employer was approved for self-insurance authority under this subsection and the parent corporation continues to be deemed an employer until such time as all outstanding workers' compensation claims have been discharged.

(4) The transfer, insolvency, dissolution or bankruptcy of a parent corporation causes the termination of the subsidiary employer's authorization to self-insure and a termination plan must be filed pursuant to subsection 14.

H. Each individual self-insurer shall submit with its application, and not less frequently than annually thereafter, a financial statement of current origin that has been audited by a certified public accountant. When a self-insurer qualifies on the basis of a financial guarantee or on the basis of an irrevocable contract of assignment, the Superintendent of Insurance may accept an audited financial statement of the guarantor or parent corporation in satisfaction of this requirement and may also require combining statements provided in an array that is reconciled to the consolidated report.

Sec. 2. 39-A MRSA §403, sub-§5, ¶A, as amended by PL 1995, c. 594, §2, is further amended to read:

A. Any group of employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this Act to their employees. A group may not be approved to operate a self-insurance plan in the form of a corporation, partnership or limited liability company. Under a group self-insurance plan the group shall assume the liability of all the employers within the group and pay all compensation for which the employers are liable under this chapter. When the plan is adopted, the group shall furnish satisfactory proof to the Superintendent of Insurance of its financial ability to pay the compensation for the employers in the group and its revenues, their source and as-

surance of continuance. ~~The superintendent shall require the deposit with the board of such securities as the superintendent determines necessary of the kind prescribed in subsection 9 or the filing of a bond issued by a surety company authorized to transact business in this State, in an amount to be determined to secure its liability to pay the compensation of each employer as above provided in accordance with subsection 9. The surety bond must be approved as to form by the superintendent.~~ The superintendent may also require that any agreements, contracts and other pertinent documents relating to the organization of the employers in the group be filed with the superintendent at the time the application for group self-insurance is made. The application must be on a form prescribed by the superintendent. The superintendent has the authority to deny the application of the group to pay the compensation for failure to satisfy any applicable requirement of this section. The superintendent shall approve or disapprove an application within 90 days. The group qualifying under this paragraph is referred to as a self-insurer.

Sec. 3. 39-A MRSA §403, sub-§5, ¶A-1 is enacted to read:

A-1. A group self-insurer shall maintain an actuarially determined fully funded trust in compliance with subsection 3, paragraph C, except that, with the approval of the Superintendent of Insurance, an affiliated group self-insurer may secure the liabilities of each member employer in accordance with this paragraph.

(1) An affiliated group self-insurer shall designate a principal member, subject to the approval of the superintendent. The principal member must be the direct or indirect parent company of every other group member.

(2) If the principal member does not have employees in the State, the principal member must meet the same qualifications as a subsidiary employer applying to become an individual self-insurer under subsection 3, paragraph G, except that direct majority ownership is not required and the group's indemnity agreement is deemed to meet the requirement for an irrevocable contract of assignment.

(3) Unless otherwise ordered by the superintendent, the principal member may provide security for the affiliated group self-insurer's obligations in the same form and amount as the security required for an individual self-insurer, based on the financial condition of the principal member and the aggregate self-insurance exposure of the group.

Sec. 4. 39-A MRSA §403, sub-§5, ¶D, as amended by PL 2011, c. 180, §2, is further amended to read:

D. If for any reason the status of a group self-insurer under this paragraph is terminated, the ~~securities, the surety bond, the letter of credit or the deposit security~~ required by this section ~~continues~~ must continue to be held by the Superintendent of Insurance or Treasurer of State in accordance with this section and remains subject to the control of the board until all claims ~~secured by the securities, surety bond, letter of credit or deposit against the group self-insurer~~ have been discharged. When all such claims have been discharged or after such period as the Superintendent of Insurance determines proper, the superintendent may accept in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making subsequent awards for payment of additional compensation, a policy of insurance furnished by the group self-insurer, its successor or assigns or other entity carrying on or liquidating such self-insurance group. The policy must be in a form approved by the superintendent and issued by any insurance company licensed to issue this class of insurance in the State. It may only be issued for a single complete premium payment in advance by the group self-insurer. It must be given in an amount determined by the superintendent and when issued is noncancellable for any cause during the continuance of the liability secured and so covered.

Sec. 5. 39-A MRSA §403, sub-§10, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

10. Form of reinsurance contracts. All reinsurance contracts issued or renewed after the effective date of this subsection must be issued by companies that meet the requirements of subsection 11 and must name ~~the self insurer and~~ the Maine Self-Insurance Guarantee Association as ~~coinsureds to the extent of their respective interests~~ an additional insured. These reinsurance contracts must recognize the Maine Self-Insurance Guarantee Association's rights of recovery, within the terms of coverage provided by the contract, for payments made by the association to or on behalf of claimants regarding covered claims and for claims in the course of settlement, the value of which when reduced to payments will create an obligation on the part of the reinsurance carrier to reimburse the association to the extent of funds disbursed by the association to discharge covered claims. The requirements of this subsection apply to any reinsurance contract issued to any individual or group self-insurer as part of a self-insurance program approved for use within this State

and are in addition to any other requirement applicable to reinsurance contracts imposed by law or rule.

Reinsurance contracts must further specify that the reinsurance carrier and the Maine Self-Insurance Guarantee Association may enter into agreements on the terms of settlement and distribution of benefits accruing to claimants within the limits of the authority of the parties to make settlements with respect to any coverage year.

To the extent that the Maine Self-Insurance Guarantee Association succeeds to a recovery of benefits from any reinsurance carrier on behalf of claimants, those benefits must be timely disbursed by the association to or on behalf of claimants as they become due and payable pursuant to this Act. Funds recovered under reinsurance contracts on behalf of claimants must be applied consistent with the terms of coverage under the contract to loss, loss adjustment expense and attorneys' fees that are payable under this Act.

Sec. 6. 39-A MRSA §403, sub-§14, ¶H-1 is enacted to read:

H-1. A member of a group self-insurer and a successor employer of a member of a group self-insurer may apply for continuing membership in the group self-insurer, subject to the approval of the Superintendent of Insurance and the group self-insurer, in accordance with procedures established by the group self-insurer. The procedures established by the group self-insurer must include requirements the superintendent determines are substantially similar to the relevant provisions of paragraphs C and D. As long as the successor employer remains a member in good standing and has fully assumed the former member's obligations, the former member may not be treated as a departing member for purposes of enhanced security requirements under subsection 3, paragraph C, subparagraph (2).

See title page for effective date.

CHAPTER 402
H.P. 91 - L.D. 123

**An Act To Recodify and Revise
the Maine Probate Code**

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

PART A

Sec. A-1. 18-A MRSA, as amended, is repealed.

Sec. A-2. 18-C MRSA is enacted to read:

TITLE 18-C
PROBATE CODE
ARTICLE 1
GENERAL PROVISIONS, DEFINITIONS AND JURISDICTION
PART 1
SHORT TITLE, CONSTRUCTION AND GENERAL PROVISIONS

§1-101. Short title

This Title may be known and cited as "the Maine Uniform Probate Code."

§1-102. Purposes; rule of construction

1. Liberal construction. This Code must be liberally construed and applied to promote its underlying purposes and policies.

2. Purposes and policies. The underlying purposes and policies of this Code are to:

A. Simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

B. Discover and make effective the intent of a decedent in the distribution of the decedent's property;

C. Promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;

D. Facilitate use and enforcement of certain trusts; and

E. Make uniform the law among the various jurisdictions.

§1-103. Supplementary general principles of law applicable

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

§1-104. Construction against implied repeal

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

§1-105. 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 by the fraud may obtain appropriate relief against the perpetrator of the fraud or restitution from any person, other than a bona fide purchaser, benefiting from the fraud, whether innocent or not. A pro-

ceeding must be commenced within 2 years after the discovery of the fraud, but a proceeding may not be brought against a person who is 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 the decedent's lifetime that affects the succession of the decedent's estate.

§1-106. 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 adopted under section 1-304. In addition, notwithstanding Title 22, section 2707, the following provisions relating to determination of death and status are applicable.

1. Application of Uniform Determination of Death Act. Death occurs when an individual is determined to be dead under the Uniform Determination of Death Act.

2. Death certificate as prima facie evidence. 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 evidence of the fact, place, date and time of death and the identity of the decedent.

3. Government record as prima facie evidence. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, asserting 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.

4. Absence of record; clear and convincing evidence required. In the absence of prima facie evidence of death under subsection 2 or 3, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

5. Presumption of death after 5-year absence. An individual whose death is not established under subsections 1 to 4, who is absent for a continuous period of 5 years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. Death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

6. Document as evidence of time of death. In the absence of evidence disputing the time of death stated on a document described in subsection 2 or 3, a document described in subsection 2 or 3 that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and

convincing evidence that the individual survived the other individual by 120 hours.

§1-107. 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 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.

§1-108. Cost-of-living adjustment of certain dollar amounts

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

A. "Consumer Price Index" means the Consumer Price Index, Annual Average, for All Urban Consumers, CPI-U: U.S. City Average, All items, reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor or, if the index is discontinued, an equivalent index reported by a federal authority or, if no such index is reported, "Consumer Price Index" means a comparable index chosen by the Bureau of Labor Statistics.

B. "Reference base index" means the Consumer Price Index for calendar year 2017.

2. Automatic adjustment of amounts for inflation. The dollar amounts stated in sections 2-102, 2-402, 2-403 and 2-405 apply to the estate of a decedent who died in or after 2017, but for the estate of a decedent who died after 2018, these dollar amounts must be increased or decreased if the Consumer Price Index for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the Consumer Price Index for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If any increase or decrease produced by the computation is not a multiple of \$100, the increase or decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of \$100, but for the purpose of section 2-405, the periodic installment amount is the lump-sum amount divided by 12. If the Consumer Price Index for 2018 is changed by the United States Department of Labor, Bureau of Labor Statistics, the reference base index must be revised using the rebasing factor reported by the Bureau of Labor Statistics or

other comparable data if a rebasing factor is not reported.

§1-109. Transfer for value

Any recorded instrument described in this Code on which the register of deeds notes by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer was made for value.

§1-110. Powers of fiduciaries relating to compliance with environmental laws

1. Fiduciary powers to comply with environmental law. From the inception of the trust or estate, a fiduciary has the following powers, without court authorization, which the fiduciary may use in the fiduciary's sole discretion to comply with environmental law:

A. To inspect and monitor property held by the fiduciary, including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting the property and to respond to any actual or threatened violation of any environmental law affecting the property held by the fiduciary;

B. To take, on behalf of the trust or estate, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

C. To refuse to accept property if the fiduciary determines that any property to be donated to the trust or estate either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving any hazardous substance that could result in liability to the trust or estate or otherwise impair the value of the assets held in the trust or estate. This paragraph does not apply to property in the trust or estate at its inception;

D. To settle or compromise at any time any claims against the trust or estate that may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;

E. To disclaim any power granted by any document, statute or rule of law that, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law; and

F. To decline to serve or to resign as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between the fiduciary

ary's fiduciary capacity and the fiduciary's individual capacity because of potential claims or liabilities that may be asserted against the fiduciary on behalf of the trust or estate because of the type or condition of assets held in the trust or estate.

2. Definitions. For purposes of this section, "environmental law" means any federal, state or local law, rule, regulation or ordinance relating to protection of the environment or human health. For purposes of this section, "hazardous substance" has the meaning set forth in Title 38, section 1362, subsection 1.

3. Costs assessed to trust or estate. The fiduciary may charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized in this section against the income or principal of the trust or estate. A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law. Neither the acceptance by the fiduciary of property nor a failure by the fiduciary to inspect property creates an inference as to whether there is or may be any liability under any environmental law with respect to the property.

4. Compliance with environmental law not a conflict of interest. The exercise by a fiduciary of any of the powers granted in this section does not constitute a transaction that is affected by a substantial conflict of interest on the part of the fiduciary.

5. Application and effective date. This section applies to all trusts and estates in existence on and created after July 1, 2019.

§1-111. Guardian ad litem

1. Appointment order. In any proceeding under this Code for which the court may appoint a guardian ad litem for a child involved in the proceeding, at the time of the appointment, the court shall specify the guardian ad litem's length of appointment, duties and fee arrangements.

2. Qualifications. A guardian ad litem appointed on or after October 1, 2005 must meet the qualifications established by the Supreme Judicial Court.

3. Release of information and access to child. If, in order to perform the guardian ad litem's duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.

4. Best interest of the child. The guardian ad litem shall use the standard of the best interest of the child as set forth in Title 19-A, section 1653, subsec-

tion 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.

5. Written report; admissibility. If required by the court, the guardian ad litem shall make a final written report to the parties and the court reasonably in advance of a hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.

6. Quasi-judicial immunity. A person appointed by the court as a guardian ad litem acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.

7. Notice of other proceedings. A guardian ad litem must be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness. The guardian ad litem shall protect the best interest of the child in those hearings and proceedings, unless otherwise ordered by the court.

PART 2

DEFINITIONS

§1-201. Definitions

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

1. Agent. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care and an individual authorized to make decisions for another under the Uniform Health Care Decisions Act.

2. Application. "Application" means a written request to the register for an order of informal probate or appointment under Article 3, Part 3.

3. Beneficiary. "Beneficiary," as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form, TOD, or of a pension, profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death; and, as it relates to a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee or taker in default of a power of appointment and a person in whose favor a power of

attorney or a power held in any individual, fiduciary or representative capacity is exercised.

4. Beneficiary designation. "Beneficiary designation" means a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form, TOD, or of a pension, profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death.

5. Child. "Child" includes any individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes any person who has no other relationship to the parent than as a stepchild, a foster child, a grandchild or any more remote descendant.

6. Claims. "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

7. Conservator. "Conservator" means a person who is appointed by a court to manage the estate of a protected person. "Conservator" includes a limited conservator.

8. Court. "Court" means any one of the several courts of probate of this State established as provided in Title 4, sections 201 and 202.

9. Descendant. "Descendant," as it relates to an individual, means all of the individual's descendants of all generations. The relationship of parent and child at each generation is determined by the definition of "parent" and "child" contained in this Code.

10. Devise. "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

11. Devisee. "Devisee" means any person designated in a will to receive a devise. For the purposes of Article 3, in the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, "devisee" includes the trust or trustee but not the beneficiaries.

12. Disability. "Disability" means cause for a protective order as described by section 5-401.

13. Distributee. "Distributee" means any person who has received property of a decedent from the personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to

the extent of the distributed assets or increment of distributed assets remaining in the trustee's possession. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

14. Domestic partner. "Domestic partner" means one of 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

15. Estate. "Estate" includes the property of the decedent, trust or other person whose affairs are subject to this Code as originally constituted and as it exists from time to time during administration.

16. Exempt property. "Exempt property" means that property of a decedent's estate that is described in section 2-403.

17. Fiduciary. "Fiduciary" includes a personal representative, guardian, conservator and trustee.

18. Foreign personal representative. "Foreign personal representative" means a personal representative appointed by another jurisdiction.

19. Formal proceedings. "Formal proceedings" means proceedings within the exclusive jurisdiction of the court conducted before a judge with notice to interested persons.

20. General personal representative. "General personal representative" means a personal representative other than a special administrator.

21. Governing instrument. "Governing instrument" means a deed, will, trust or insurance or annuity policy; account with POD designation; security registered in beneficiary form, TOD; transfer on death deed, TOD; pension, profit-sharing, retirement or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive or nominative instrument of any similar type.

22. Guardian. "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or spouse or by the court. "Guardian" includes a limited, an emergency and a temporary substitute guardian but not a guardian ad litem.

23. Heirs. "Heirs," except as provided in section 2-711, means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

24. Incapacitated person. "Incapacitated person" means an individual who, for reasons other than being a minor, is unable to receive and evaluate infor-

mation or make or communicate informed decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety or self-care, even with reasonably available appropriate technological assistance.

25. Informal proceedings. "Informal proceedings" means proceedings conducted without notice to interested persons by an officer of the Court acting as a register for probate of a will or appointment of a personal representative.

26. Interested person. "Interested person" includes heirs, devisees, children, spouses, domestic partners, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. "Interested person" also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. In any proceeding or hearing under Article 5 affecting a trust estate or estate, when the ward or protected person has received benefits from the United States Department of Veterans Affairs within 3 years, "interested person" includes the Secretary of Veterans Affairs. The definition of "interested person" as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

27. Issue. "Issue," as it relates to a person, means a descendant of that person.

28. Joint tenants with the right of survivorship. "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

29. Judge. "Judge" means the judge of a court.

30. Lease. "Lease" includes an oil, gas or other mineral lease.

31. Letters. "Letters" includes letters of authority, letters testamentary, letters of guardianship, letters of administration and letters of conservatorship.

32. Minor. "Minor" means an unemancipated individual who has not attained 18 years of age.

33. Mortgage. "Mortgage" means any conveyance, agreement or arrangement in which property is encumbered or used as security.

34. Nonresident decedent. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

35. Oath. "Oath" means an oath or affirmation.

36. Organization. "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association or any other legal or commercial entity.

37. Parent. "Parent" includes any person entitled to take, or who would be entitled to take if a child died without a will, as a parent under this Code by intestate succession from the child whose relationship is in question and excludes any person who has no other relationship to the child than as a stepparent, foster parent or grandparent.

38. Payor. "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person authorized or obligated by law or a governing instrument to make payments.

39. Person. "Person" means an individual or an organization.

40. Personal representative. "Personal representative" includes an executor, administrator, successor personal representative, special administrator and a person who performs substantially the same function under the appropriate governing law.

41. Petition. "Petition" means a written request to the court for an order after notice.

42. POD designation. "POD designation" has the same meaning as in section 6-201, subsection 8.

43. Proceeding. "Proceeding" includes any civil action in any court of competent jurisdiction.

44. Property. "Property" means anything that may be the subject of ownership and includes both real and personal property or any interest therein.

45. Protected person. "Protected person" means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

46. Protective proceeding. "Protective proceeding" means a proceeding under Article 5, Part 6.

47. Record. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

48. Register. "Register" means the official of the court elected or appointed as provided in section 1-501 or any other person performing the functions of register as provided in Part 5.

49. Registered domestic partners. "Registered domestic partners" means domestic partners who are registered in accordance with Title 22, section 2710.

50. Security. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of

indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any such security.

51. Settlement. "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

52. Sign. "Sign" means with present intent to authenticate or adopt a record other than a will:

- A. To execute or adopt a tangible symbol; or
- B. To attach to or logically associate with the record an electronic symbol, sound or process.

53. Special administrator. "Special administrator" means a personal representative as described by sections 3-614 to 3-618.

54. Spouse. "Spouse" means an individual who is lawfully married and includes registered domestic partners and individuals who are in a legal union that was validly formed in any state or jurisdiction and that provides substantially the same rights, benefits and responsibilities as a marriage.

55. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

56. Successor personal representative. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

57. Successors. "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this Code.

58. Supervised administration. "Supervised administration" refers to the proceedings described in Article 3, Part 5.

59. Survive. "Survive," as it relates to an individual, means to neither predecease an event, including the death of another individual, nor be deemed to have predeceased an event under section 2-104 or 2-702. "Survive" includes its derivatives, such as "survives," "survived," "survivor" and "surviving."

60. Testacy proceeding. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

61. Testator. "Testator" means an individual of either sex who has executed a will.

62. TOD designation. "TOD designation" means the designation of a security registered in beneficiary form to provide that the security be transferred on the death of the owner.

63. Trust. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. "Trust" also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 6, custodial arrangements pursuant to the Maine Uniform Transfers to Minors Act, business trusts provided for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, and excludes any arrangement under which a person is nominee or escrowee for another person.

64. Trustee. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

65. Ward. "Ward" means an individual for whom a guardian has been appointed.

66. Will. "Will" includes a codicil and any testamentary instrument that only appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

PART 3

SCOPE, JURISDICTION AND COURTS

§1-301. Territorial application

Except as otherwise provided in this Code, this Code applies to the following:

1. Domiciled in the State. The affairs and estates of decedents, missing persons and persons to be protected who are domiciled in this State;

2. Nonresidents. The property of nonresidents located in this State or property coming into the control of a fiduciary who is subject to the laws of this State;

3. Persons without capacity. Incapacitated persons and minors in this State;

4. Survivorship. Survivorship and related accounts in this State; and

5. Trusts. Trusts subject to administration in this State.

§1-302. Subject matter jurisdiction

1. Subject matter jurisdiction. To the full extent permitted by the laws of the State, the court has jurisdiction over all subject matter relating to:

A. The estates of decedents, including the construction of wills and determination of heirs and successors of decedents, and estates of protected persons;

B. The protection of minors and incapacitated persons; and

C. Trusts.

2. Court authority. The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters that come before it.

3. Protective and guardianship proceedings. The court has jurisdiction over protective proceedings and guardianship proceedings.

4. Consolidation. If both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

§1-303. Venue; multiple proceedings; transfer

1. Court where proceeding first commenced. If a proceeding under this Code could be maintained in more than one court in this State, the court in which the proceeding is first commenced has the exclusive right to proceed.

2. Multiple proceedings. If proceedings concerning the same estate, protected person, ward or trust are commenced in more than one court of this State, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided. If the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

3. Transfer in the interest of justice. If a court finds that in the interest of justice a proceeding or a file should be located in another court of this State, the court making the finding may transfer the proceeding or file to the other court.

§1-304. Rule-making power

1. Rules. The Supreme Judicial Court may prescribe by general rules the forms, practice and procedure, including rules of evidence, to be followed in all proceedings under this Code and all appeals from such proceedings. The rules must be consistent with the provisions of this Code and may not abridge, enlarge or modify any substantive right.

2. Laws inconsistent with rules. After the effective date of the rules adopted or amended under sub-

section 1, all laws in conflict with those rules are of no further force or effect, except that in the event of a conflict with a provision of this Code, the Code provision prevails.

§1-305. Records and certified copies; judicial supervision

The register shall maintain records and files and provide copies of documents as provided in sections 1-501 to 1-511 and further records and copies as the Supreme Judicial Court may by rule provide. The register is subject to the supervision and authority of the judge of the court in which the register serves.

§1-306. No jury trial; removal

1. No jury trial. In any proceeding under this Code, the court shall sit without a jury.

2. Removal to Superior Court for jury trial. Upon timely demand by any party, any proceeding not within the exclusive jurisdiction of the court may be removed for trial to the Superior Court under the procedures the Supreme Judicial Court provides by rule.

§1-307. Register; powers

The register has the power to probate wills, appoint personal representatives as provided in sections 3-302 and 3-307 and perform other duties set out in this Code. The acts and orders that may be performed by the register under this Code may also be performed by a judge of the court or by a deputy register appointed under the provisions of section 1-506.

§1-308. Appeals

Appeals from all final judgments, orders and decrees of the court may be taken to the Supreme Judicial Court, sitting as the Law Court, as in other civil actions.

§1-309. Judges

A judge of the court must be chosen and shall serve as provided in Title 4, sections 301 to 312.

§1-310. Oath or affirmation on filed documents

Except as otherwise specifically provided in this Code or by rule, every document filed with the court under this Code, including applications, petitions and demands for notice, is deemed to include an oath, affirmation or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed. Deliberate falsification may subject the person executing or filing the document to penalties for perjury.

PART 4**NOTICE, PARTIES AND REPRESENTATION
IN ESTATE LITIGATION AND OTHER
MATTERS****§1-401. Notice**

Whenever notice of any proceeding or any hearing is required under this Code, it must be given to any interested person in the manner the Supreme Judicial Court provides by rule. Each notice must include notification of any right to contest or appeal and may be proved by the filing of an affidavit of notice.

§1-402. Notice; waiver

A person, including a guardian ad litem, conservator or other fiduciary, may waive notice in the manner the Supreme Judicial Court provides by rule.

§1-403. Pleadings; when parties bound by others; notice

In formal proceedings involving trusts or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, the following provisions apply.

1. Pleadings. Interests to be affected must be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests or in some other appropriate manner.

2. Orders binding another person. A person is bound by an order binding another person in the following cases.

A. An order binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests, as objects or takers in default or otherwise, are subject to the power.

B. To the extent there is no conflict of interest between them or among persons represented:

(1) An order binding a conservator binds the person whose estate the conservator controls;

(2) An order binding a guardian binds the ward if no conservator of the ward's estate has been appointed;

(3) An order binding a trustee binds beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, in proceedings to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other 3rd parties;

(4) An order binding a personal representative binds persons interested in the undistrib-

uted assets of a decedent's estate in actions or proceedings by or against the estate; and

(5) An order binding a sole holder or all coholders of a general testamentary power of appointment binds other persons to the extent their interests, as objects or takers in default or otherwise, are subject to the power.

C. Unless otherwise represented, a minor, an incapacitated person or an unborn or unascertained person is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

3. Representation of minors. If a conservator or guardian has not been appointed, a parent may represent a minor.

4. Notice. Notice is required as follows:

A. Notice as prescribed by section 1-401 must be given to every interested person or to a person who may bind an interested person as described in subsection 2, paragraph A or B. Notice may be given both to a person and to another person who may bind the person; and

B. Notice must be given to unborn or unascertained persons who are not represented under subsection 2, paragraph A or B by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

5. Appointment of guardian ad litem. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated person or an unborn or unascertained person if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record or the proceeding.

PART 5**REGISTERS OF PROBATE****§1-501. Election; bond; vacancies; salaries; copies**

1. Election. Registers of probate are elected or appointed as provided in the Constitution of Maine. A register's election is effected and determined as is provided for county commissioners by Title 30-A, chapter 1, subchapter 2, and a register's term commences on the first day of January following the register's election, except that the term of a register appointed to fill a vacancy commences immediately.

2. Bond. A register, before acting, shall give bond to the treasurer of the register's county with suf-

efficient sureties in the sum of \$2,500, except that this sum must be \$10,000 for Cumberland County. A register, having executed the bond, shall file the bond in the office of the county commissioners of the register's county, to be presented to the county commissioners at the next meeting for approval. After the bond is approved, the county commissioners shall retain a copy of the bond and deliver the original bond to the register, who shall deliver the original bond to the treasurer of the county within 10 days after the bond's approval. Surety and fidelity insurance coverage provided by a public sector self-funded risk pool organized pursuant to Title 30-A, section 2253 in the sum ordered by the commissioners is deemed to comply with the requirements of this section.

3. Vacancies. Vacancies caused by death, resignation, removal from the county, permanent incapacity as defined in Title 30-A, section 1, subsection 2-A or any other reason must be filled as provided in the Constitution of Maine. In the case of a vacancy in the term of a register who was nominated by primary election before the general election, the register appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the register whose term is vacant. In making the appointment, the Governor shall choose from any recommendations submitted to the Governor by the county committee of the political party from which the appointment is to be made.

4. Salary. A register is entitled to receive an annual salary as established by the register's county pursuant to Title 30-A, chapter 3. The salary of the register must be in full compensation for the performance of all duties required of the register.

5. Copies and fees. Registers may make copies of wills, accounts, inventories, petitions and decrees and furnish the copies to the persons requesting the copies and may charge a reasonable fee for that service, which is considered a fee for the use of the county. Fees for exemplified copies of the records of the probate of wills and the granting of administrations, guardianships and conservatorships; fees for copies of petitions and orders of notice for personal service; fees for appeal copies; and the statutory fees for abstracts and copies of the waivers of wills and other copies required to be recorded in the registry of deeds are considered official fees for the use of the county. This subsection may not be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge.

§1-502. Condition of bond

A register's bond is conditioned on the register's accounting, according to law, for all fees received by or payable to the register by virtue of the office and the register's paying the fees to the county treasurer by the 15th day of each month following the month in which the fees were collected, as provided by law; the

register's keeping, seasonably and in good order, the records of the court; the register's making and keeping correct and convenient indices of the records; and the register's faithfully discharging all other duties of the office. If a register forfeits the register's bond, the register is disqualified from holding office. The register's failure to complete the register's records for more than 6 months at any time, except in cases of sickness or extraordinary casualty, constitutes a forfeiture.

§1-503. Duties; records; binding of papers; facsimile signature

1. Duties. Registers are responsible for the care and custody of all files, papers and books belonging to the probate office and shall duly record all wills probated formally or informally, letters of authority of a personal representative, guardianships or conservatorships issued, bonds approved, accounts filed or allowed, all informal applications and findings, all petitions, decrees, orders or judgments of the judge, including all petitions, decrees or orders relating to adoptions and changes of names and other matters, as the judge directs.

2. Records. Registers shall keep a docket of all probate cases and, under the appropriate heading of each case, make entries of each motion, order, decree and proceeding so that at all times the docket shows the exact condition of each case. A register may act as an auditor of accounts when requested to do so by the judge, and the judge's decision is final unless appealed in the same manner as other probate appeals. The records may be attested by the volume, and it is considered to be a sufficient attestation of those records when each volume bears the attest with the written signature of the register or other person authorized by law to attest those records.

3. Binding of papers. A register may bind in volumes of convenient size original inventories and accounts filed in the register's office and, when bound and indexed, those inventories and accounts are deemed to be recorded in all cases in which the law requires a record to be made and no further record is required.

4. Facsimile signature. A facsimile of the signature of the register or deputy register imprinted at the register's or deputy register's direction upon any instrument, certification or copy that is customarily certified by the register or deputy register or recorded in the probate office has the same validity as the register's or deputy register's signature.

§1-504. Certification of wills; appointments of personal representatives; elective share petitions involving real estate

1. Duty of register. The register shall prepare and submit a certification in accordance with subsection 2 within 30 days after the date on which:

- A. A will has been proved or allowed;
- B. An appointment of a personal representative has been made upon an assumption of intestate status and the petition for appointment indicates that the decedent owned real estate; or
- C. A petition for an elective share has been filed and the will or the petition upon which the appointment of a personal representative was granted indicates that the decedent owned real estate.

2. Certification. When required by subsection 1, the register shall certify to the register of deeds in the county where any affected real estate is situated a true copy of the portion of the will that devises the real estate, an abstract of the appointment of the personal representative or a true copy or abstract of the petition for an elective share. Each certification must also include:

- A. A description of the real estate derived from the probated will or the petition upon which the appointment of the personal representative was made;
- B. The name of the decedent;
- C. The name or names of the devisees or heirs; and
- D. In the case of a will, the date of allowance of the will and an indication whether the will was probated formally or informally.

3. Additional certification if will previously probated informally. If a will was informally probated and subsequently formally probated or denied probate in formal proceedings, the register shall certify the formal probate or formal denial of probate to the register of deeds to which the prior informally probated will was certified, setting forth the date of the formal probate or denial. A register of deeds that receives a certification pursuant to this subsection shall indicate on the certification the time of receipt and record the certification in the same manner as a deed of real estate.

§1-505. Notice to beneficiaries; furnishing of copies

A register shall, within 30 days after a will is probated, notify by mail all beneficiaries under the will that devises have been made to them, stating the name of the testator and the name of the personal representative, if a personal representative has been appointed at the time this notification is sent. Beneficiaries in a will may, upon application to the register, be furnished with a copy of the probated will upon payment of a fee of \$1 per page.

§1-506. Deputy register of probate

A register may appoint a deputy register for the county, subject to the requirements of Title 30-A, sec-

tion 501. The deputy register may perform any of the duties prescribed by law to be performed by the register. The signature of the deputy register has the same force and effect as the signature of the register. The deputy register shall give bond to the county for the faithful discharge of the deputy register's duties in the same sum and in the same manner as the register. The deputy register shall act as register in the event of a vacancy or absence of the register, until the register resumes the register's duties or another person is qualified as register. The deputy register is entitled to receive an annual salary established by the register and approved by the county commissioners.

In the case of an absence of the register in a county where a deputy register has not been appointed or in the case of a vacancy in the office of register due to death, resignation or any other cause, the judge shall appoint a suitable person to act as register pro tempore until the register resumes the duties of office or another person is qualified as register. A register pro tempore must be sworn and, if the judge requires it, shall give bond as in the case of the register.

§1-507. Inspection of register's conduct of office

A judge shall constantly inspect the conduct of the register with respect to the register's records and duties and give information in writing of any breach of the register's bond to the treasurer of the county, who shall bring a civil action. Any funds recovered in the civil action must be applied toward the expenses of completing the records of the register under the direction of the judge and the surplus, if any, must inure to the county. If the funds are insufficient, the treasurer may recover the deficiency from the register in a civil action.

§1-508. Register incapable or neglects duties

When a register is unable to perform or neglects the duties of the office, the judge shall certify the register's inability or neglect to the county treasurer, the time of the commencement and termination of the inability or neglect and the name of the person who has performed the duties for that time period. The treasurer shall pay the person named by the judge a salary in proportion to the time that the person has performed the duties of the register and the amount must be deducted from the register's salary.

§1-509. Records in case of vacancy

When there is a vacancy in the office of register and the office's records are incomplete, the records may be completed and certified by the person appointed to act as register or by the register's successor.

§1-510. Register or court employee; prohibited activities

1. Prohibited activities. A register may not:

A. Be an attorney or counselor in or out of court in an action or matter pending in the court of which the register is register or in an appeal in such action or matter;

B. Be an administrator, guardian, commissioner of insolvency, appraiser or divider of an estate, in a case within the jurisdiction of the court of which the register is register, except as provided in Title 4, section 307, or be in any manner interested in the fees and emoluments arising from such an estate in that capacity; or

C. In violation of this section, commence or conduct, either personally or by agent or clerk, any matter, petition, process or proceeding in the court of which the register is register.

2. Assistance in drafting. Except as otherwise provided in this section, a register may not draft or aid in drafting documents or paper that the register is by law required to record in full or in part. A register may aid in drafting applications in informal proceedings, petitions or sworn statements relating to the closing of decedents' estates that have not been contested prior to closing, applications for change of name and petitions for guardians of minors. A register or an employee of a court may not charge fees or accept anything of value for assisting in the drafting of documents to be used or filed in the court of which the person is the register or an employee.

3. Penalties. The following penalties apply to violations of this section.

A. A register who violates subsection 1 commits a Class E crime. Violation of subsection 1 is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

B. A register or employee of a court who violates subsection 2 is subject to a civil penalty of not more than \$100, to be recovered by a complainant in a civil action for the complainant's benefit or by civil action for the benefit of the county.

§1-511. Fees for approved blanks and forms

For all approved blanks, forms or schedule paper required in court proceedings, the register shall charge fees, which must be set by the register and approved by the county commissioners, so as to avoid incurring a loss to the county for such services. The register shall pay such fees to the county treasurer for the use and benefit of the county.

PART 6

COSTS AND FEES

§1-601. Costs in contested cases

In contested probate cases and appeals, costs may be allowed to either party, including reasonable witness fees, costs of depositions, hospital records or

medical reports and attorney's fees, to be paid to either or both parties out of the estate in controversy, as justice requires. In cases in which a will is contested on the grounds of undue influence or mental capacity, attorney's fees and costs may not be allowed to a party who unsuccessfully contests the will.

§1-602. Filing and certification fees

The person making the request shall pay the register the following fees for filing or certifying documents.

1. Certification. For making and certifying to the register of deeds copies of devises of real estate, abstracts of petitions for appointment of a personal representative or for an elective share and any other document for which certification is required, the fee is \$15 plus the fee for recording as provided by Title 33, section 751, except as otherwise expressly provided by law. The fee must be paid by the personal representative, petitioner or other person filing the document to be certified when the copy of the devise, abstract, petition for elective share or other document for which certification is required is requested. The register of probate shall deliver the certified document to the register of deeds together with the fee for recording as provided by Title 33, section 751.

2. Filing. For receiving and entering each petition or application for all estates, testate and intestate, including foreign estates, and the filing of a notice by a domiciliary foreign personal representative, except for the filing of a successor personal representative, when the value of the estate is:

- A. \$10,000 and under, the fee is \$20;
- B. \$10,001 to \$20,000, the fee is \$40;
- C. \$20,001 to \$30,000, the fee is \$60;
- D. \$30,001 to \$40,000, the fee is \$75;
- E. \$40,001 to \$50,000, the fee is \$95;
- F. \$50,001 to \$75,000, the fee is \$125;
- G. \$75,001 to \$100,000, the fee is \$190;
- H. \$100,001 to \$150,000, the fee is \$250;
- I. \$150,001 to \$200,000, the fee is \$325;
- J. \$200,001 to \$250,000, the fee is \$375;
- K. \$250,001 to \$300,000, the fee is \$450;
- L. \$300,001 to \$400,000, the fee is \$500;
- M. \$400,001 to \$500,000, the fee is \$575;
- N. \$500,001 to \$750,000, the fee is \$625;
- O. \$750,001 to \$1,000,000, the fee is \$700;
- P. \$1,000,001 to \$1,500,000, the fee is \$750;
- Q. \$1,500,001 to \$2,000,000, the fee is \$875; or

R. More than \$2,000,000, the fee is \$950, and continuing in steps of \$100 for every increase in value of \$500,000 or part thereof above \$2,500,000.

For filing a will for no probate, there is no charge.

For filing a will to be probated and without an appointment, the fee is \$15.

3. Copies of court records. For making copies from the records of the court, the fee is \$1 for each page.

4. Certificate of appointment. For each certificate, under seal of the court, of the appointment and qualification of a personal representative, guardian, conservator or trustee, the fee is \$5, and for each double certificate, the fee is \$10.

5. Petition for appointment as guardian. For filing a petition for appointment as guardian, the fee is \$50.

6. Application for involuntary hospitalization. For filing an application for involuntary hospitalization, the fee is \$10.

7. Petition for guardian and conservator. For filing a joined petition for guardian and conservator, the fee is \$75.

8. Petition for appointment of conservator. For filing a petition for appointment of conservator, the fee is \$50.

9. Petition for elective share. For filing a petition for elective share, the fee is \$120.

10. Subsequent informal appointments. For all other subsequent informal appointments, the fee is \$25.

11. Other formal proceeding. For filing any other formal proceeding, the fee is \$25.

12. Registration of guardianship order from another state. For registering a guardianship order from another state, the fee is \$25.

§1-603. Registers to account monthly for fees

A register shall account for each calendar month under oath to the county treasurer for all fees received by the register or payable to the register by virtue of the office, specifying the items, and shall pay the whole amount for each calendar month to the treasurer of the county not later than the 15th day of the following month.

§1-604. Expenses of partition

When a partition of real estate is made by order of a judge, the interested parties shall pay the expenses in proportion to their interests. When expenses accrue prior to the closing order or statement of the personal representative of the deceased owner of such real es-

tate, the personal representative may pay the expenses from the personal representative's account. In case of neglect or refusal to pay of any person liable to pay such expenses, the judge may issue a warrant of distress against that person for the amount due and costs of process.

§1-605. Compensation of court reporters

Court reporters appointed under Title 4, sections 751 to 756 shall, if a transcript is requested by the court or a party, file the original transcript with the court and receive the same compensation as provided by law for temporary court reporters as well as mileage at the rate of 10¢ a mile.

Transcripts furnished for the files of the court must be paid for by the county in which the court or examination is held at the rate prescribed by the Supreme Judicial Court, after the reporter's bill has been allowed by the judge of the court in which the services were rendered. In probate matters, the personal representative, conservator or guardian shall, in each case out of the estate handled by that personal representative, conservator or guardian, pay to the register for the county the amount of the reporter's fees, giving the fees the same priority as provided in section 3-815 for other costs and expenses of administration, or as otherwise provided for in the case of insolvent estates. If the estate assets are not sufficient, the court may order payment by the county.

§1-606. Court reporters to furnish copies

Court reporters shall furnish correct typewritten copies of the oral testimony taken at any hearing or examination upon request by any person and payment of transcript rates prescribed by the Supreme Judicial Court.

§1-607. Surcharge for restoration, storage and preservation of records

1. Surcharge. In addition to any other fees required by law, a register shall collect a surcharge of \$10 per petition, application or complaint, except for name changes, filed in the court.

2. Nonlapsing account. The surcharge imposed in subsection 1 must be transferred to the county treasurer, who shall deposit it in a separate, nonlapsing account within 30 days of receipt. Money in the account is not available for use as general revenue of the county. Interest earned on the account must be credited to the account.

3. Use of account funds. The money in the account established in subsection 2 must be used for the restoration, storage and preservation of the records filed in the office of the register and in the court. No withdrawals from this account may be made without the express written request or approval of the register.

4. Waiver of surcharge. The judge may waive the surcharge in subsection 1 if the judge believes that it will prove a hardship for the individual filing the petition, application or complaint.

§1-608. Fees not established in statute

Unless otherwise specifically stated in statute or in the Rules of Probate Procedure published by the Supreme Judicial Court, the Probate Court shall charge the same fee charged by the District Court or the Superior Court for similar procedures.

PART 7

CHANGE OF NAME

§1-701. Petition to change name

1. Petition; where filed. If a person desires to have that person's name changed, the person may petition the judge in the county where the person resides. If the person is a minor, the person's legal custodian may petition on the person's behalf. If there is a proceeding involving custody or other parental rights with respect to the minor pending in the District Court, the petition must be filed in the District Court.

2. Notice and name change. Upon receipt of a petition filed under subsection 1, the judge, after due notice, may change the name of the person. To protect the person's safety, the judge may limit the notice required if the person shows by a preponderance of the evidence that:

- A. The person is a victim of abuse; and
- B. The person is currently in reasonable fear of the person's safety.

3. Record. The judge shall make and preserve a record of a name change. If the judge limited the notice required under subsection 2, the judge may seal the record of the name change.

4. Filing fee. The fee for filing a name change petition is \$40.

5. Background checks. The judge may require a person seeking a name change to undergo one or more of the following background checks: a criminal history record check; a motor vehicle record check; or a credit check. The judge may require the person to pay the cost of each background check required.

6. Denial of petition brought for improper purpose. The judge may not change the name of a person if the judge has reason to believe that the person is seeking the name change for purposes of defrauding another person or entity or for purposes otherwise contrary to the public interest.

PART 8

PROBATE AND TRUST LAW ADVISORY COMMISSION

§1-801. Commission established

The Probate and Trust Law Advisory Commission, established in Title 5, section 12004-1, subsection 73-B and referred to in this Part as "the commission," is created for the purpose of conducting a continuing study of the probate and trust laws of the State.

1. Membership. The commission is composed of 10 members who have experience in practicing probate and trust law or are knowledgeable about probate and trust law. The membership of the commission must include:

- A. Two Probate Court Judges, appointed by the Chief Justice of the Supreme Judicial Court;
- B. One Superior Court Justice, appointed by the Chief Justice of the Supreme Judicial Court;
- C. Five members of the trusts and estates law section of the Maine State Bar Association, appointed by the Chief Justice of the Supreme Judicial Court;
- D. One member representing the interests of older people, appointed by the Governor; and
- E. The Attorney General or the Attorney General's designee.

2. Terms. A member is appointed for a term of 3 years and may be reappointed.

3. Vacancies. In the event of the death or resignation of a member, the appointing authority under subsection 1 shall appoint a qualified person for the remainder of the term.

§1-802. Consultants; experts

Whenever it considers appropriate, the commission may seek the advice of consultants or experts, including representatives of the legislative and executive branches, in fields related to the commission's duties.

§1-803. Duties

1. Examine, evaluate and recommend. The commission shall:

- A. Examine this Title and Title 18-B and draft amendments that the commission considers advisable;
- B. Evaluate the operation of this Title and Title 18-B and recommend amendments based on the evaluation;
- C. Examine current laws pertaining to probate and trust laws and recommend changes based on the examination; and

D. Examine any other aspects of the State's probate and trust laws, including substantive, procedural and administrative matters, that the commission considers relevant.

2. Propose changes. The commission may propose to the Legislature, at the start of each session, changes in the probate and trust laws and in related provisions that the commission considers appropriate.

§1-804. Organization

The Chief Justice of the Supreme Judicial Court shall notify all members of the commission of the time and place of the first meeting of the commission. At that time the commission shall organize, elect a chair, vice-chair and secretary-treasurer from its membership and adopt rules governing the administration of the commission and its affairs. The commission shall maintain financial records as required by the State Auditor.

§1-805. Federal funds

The commission may accept federal funds on behalf of the State.

ARTICLE 2
INTESTACY, WILLS AND DONATIVE
TRANSFERS

PART 1

INTESTATE SUCCESSION

SUBPART 1

GENERAL PROVISIONS

§2-101. Intestate estate

1. Intestate succession. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this Code, except as modified by the decedent's will.

2. Will expressly excludes or limits. A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the individual's or member's intestate share.

§2-102. Share of spouse

The intestate share of a decedent's surviving spouse is:

1. No descendant or parent. The entire intestate estate if:

A. No descendant or parent of the decedent survives the decedent; or

B. All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

2. No descendant but parent survives. The first \$300,000, plus 3/4 of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

3. Descendants of both decedent and spouse, just spouse. The first \$100,000, plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent; and

4. Descendants of decedent, not spouse. One-half of the intestate estate, if there are surviving descendants one or more of whom are not descendants of the surviving spouse.

§2-103. Share of heirs other than surviving spouse

1. Share of heirs other than surviving spouse; order. Any part of the intestate estate not passing to a decedent's surviving spouse under section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:

A. To the decedent's descendants per capita at each generation;

B. If there is no surviving descendant, to the decedent's parents equally if both survive or to the surviving parent if only one survives;

C. If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them per capita at each generation;

D. If there is no surviving descendant, parent or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:

(1) Half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, to be distributed to the descendants per capita at each generation; and

(2) Half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, to be distributed to the descendants per capita at each generation;

E. If there is no surviving descendant, parent or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner described in paragraph D; and

F. If there is no surviving descendant, parent or descendant of a parent, grandparent or descendant of a grandparent, but the decedent is survived by one or more great-grandparents or descendants of great-grandparents, half of the estate passes to the paternal great-grandparents who survive, or to the descendants of the paternal great-grandparents if all are deceased, to be distributed per capita at each generation as described in section 2-106; and the other half passes to the maternal relatives in the same manner, but if there is no surviving great-grandparent or descendant of a great-grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

2. No takers under subsection 1. If there is no taker under subsection 1, but the decedent has:

A. One deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants per capita at each generation; or

B. More than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants per capita at each generation.

§2-104. Requirement of survival by 120 hours; individual in gestation

1. Applicable provisions. For purposes of intestate succession, homestead allowance and exempt property, and except as otherwise provided in subsection 2, the provisions of this subsection apply.

A. An individual born before a decedent's death who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by 120 hours, the individual is deemed to have failed to survive for the required period.

B. An individual in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives 120 hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived 120 hours after birth, the in-

dividual is deemed to have failed to survive for the required period.

2. Not applicable if results in escheat. This section does not apply if its application would cause the estate to pass to the State under section 2-105.

§2-105. No taker

If there is no taker under the provisions of this Article, the intestate estate passes to the State, except that an amount of funds included in the estate up to the total amount of restitution paid to the decedent pursuant to a court order for a crime of which the decedent was the victim passes to the Elder Victims Restitution Fund established in Title 34-A, section 1214-A.

§2-106. Per capita at each generation

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

A. "Deceased descendant," "deceased parent" or "deceased grandparent" means a descendant, parent or grandparent, respectively, who either predeceased the decedent or is deemed to have predeceased the decedent under section 2-104.

B. "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 2-104.

2. Per capita at each generation; decedent's descendants. If, under section 2-103, subsection 1, paragraph A, a decedent's intestate estate or a part thereof passes per capita at each generation to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are:

A. Surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

B. Deceased descendants in the same generation identified in paragraph A who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

3. Per capita at each generation; descendants of decedent's parents, grandparents. If, under section 2-103, subsection 1, paragraph C or D, a decedent's intestate estate or a part thereof passes per capita at each generation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part

thereof is divided into as many equal shares as there are:

- A. Surviving descendants in the generation nearest to the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and
- B. Deceased descendants in the same generation identified in paragraph A who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

§2-107. Kindred of half blood

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

§2-108. Advancements

1. Gifts treated as advancements. If an individual dies intestate as to all or a portion of that individual's estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

- A. The decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or
- B. The decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

2. Valuation of advanced property. For purposes of subsection 1, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

3. Recipient's failure to survive decedent. If the recipient of the property under subsection 1 fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

§2-109. Debts to decedent

A debt owed to the decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

§2-110. Alienage

An individual is not disqualified to take as an heir because the individual or an individual through whom the individual claims is or has been an alien.

§2-111. Dower and curtesy abolished

The estates of dower and curtesy are abolished.

§2-112. Individuals related to decedent through 2 lines

An individual who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share. In cases where such an heir would take equal shares, the individual is entitled to the equivalent of a single share. The court shall equitably apportion the amount equivalent in value to the share denied such heir by the provisions of this section.

§2-113. Parent barred from inheriting

1. Parent barred from inheriting though child.

A parent is barred from inheriting through intestate succession from or through a child of the parent if:

A. The parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

B. The child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under the laws of this State other than Articles 1 to 8 on the basis of nonsupport, abandonment, abuse, neglect or other actions or inactions of the parent toward the child.

2. Treated as predeceased child. For the purpose of intestate succession from or through a deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

SUBPART 2

PARENT-CHILD RELATIONSHIP

§2-115. Determination of parentage for purposes of intestate succession

Unless otherwise provided in this subpart, "parent" for purposes of intestate succession means a person who has established a parent-child relationship with the child under Article 9 or Title 19-A, chapter 61 and whose parental rights have not been terminated.

§2-116. Effect of a pending petition

If a petition to establish parentage under Title 19-A, chapter 61 or a petition for adoption under Article 9 is pending and has not been finally adjudicated at the time of the petitioner's death, the subject of the

petition is considered a child of the petitioner for intestate succession purposes and may inherit from and through the petitioner. If the subject of the petition dies before a final adjudication of parentage is issued, the petitioner may inherit from or through the subject of the petition only if there is a final adjudication of parentage.

§2-117. Effect of an order granting adoption on adoptee and adoptee's former parents

An order granting an adoption divests the adoptee's former parents of all legal rights, powers, privileges, immunities, duties and obligations concerning the adoptee, including the right to inherit from or through the adoptee. An adoptee, however, may inherit from the adoptee's former parents if so provided in the adoption decree.

§2-118. Child born after death of parent

An individual is a parent of a child who is born after the individual's death, if the child is:

1. **In utero.** In utero not later than 36 months after the individual's death; or
2. **Born.** Born not later than 45 months after the individual's death.

PART 2

ELECTIVE SHARE OF SURVIVING SPOUSE

§2-201. Definitions

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

1. **Decedent's nonprobate transfers to others.** As used in sections other than section 2-205, "decedent's nonprobate transfers to others" means the amounts that are included in the augmented estate under section 2-205.
2. **Fractional interest in property held in joint tenancy with the right of survivorship.** "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means a fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent or, if the decedent was not a joint tenant, is the number of joint tenants.
3. **Marriage.** "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.
4. **Nonadverse party.** "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or

nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

5. **Power; power of appointment.** "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

6. **Presently exercisable general power of appointment.** "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

7. **Property.** "Property" includes values subject to a beneficiary designation.

8. **Right to income.** "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust or a similar arrangement.

9. **Transfer.** "Transfer," as it relates to a transfer by or of the decedent, includes:

- A. An exercise or release of a presently exercisable general power of appointment held by the decedent;
- B. A lapse at death of a presently exercisable general power of appointment held by the decedent; and
- C. An exercise, release or lapse of a general power of appointment that the decedent created in the decedent and of a power described in section 2-205, subsection 2, paragraph B that the decedent conferred on a nonadverse party.

§2-202. Elective share

1. **Elective-share amount.** The surviving spouse of a decedent who dies domiciled in this State has a right of election, under the limitations and conditions stated in this Part, to take an elective-share amount equal to 50% of the value of the marital-property portion of the augmented estate.

2. **Effect of election on statutory benefits.** If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property and family allowance, if any, are not charged against but are in addition to the elective share.

3. **Nondomiciliary.** The right, if any, of the surviving spouse of a decedent who dies domiciled outside this State to take an elective share in property in

this State is governed by the law of the decedent's domicile at death.

§2-203. Composition of the augmented estate; marital-property portion

1. Value of augmented estate. Subject to section 2-208, the value of the augmented estate, to the extent provided in sections 2-204, 2-205, 2-206 and 2-207, consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute:

- A. The decedent's net probate estate;
- B. The decedent's nonprobate transfers to others;
- C. The decedent's nonprobate transfers to the surviving spouse; and
- D. The surviving spouse's property and nonprobate transfers to others.

2. Value of marital-property portion. The value of the marital-property portion of the augmented estate consists of the sum of the values of the 4 components of the augmented estate as determined under subsection 1 multiplied by a percentage as follows.

If the decedent and the spouse were married to each other:

- A. Less than one year, the percentage is 3%;
- B. One year but less than 2 years, the percentage is 6%;
- C. Two years but less than 3 years, the percentage is 12%;
- D. Three years but less than 4 years, the percentage is 18%;
- E. Four years but less than 5 years, the percentage is 24%;
- F. Five years but less than 6 years, the percentage is 30%;
- G. Six years but less than 7 years, the percentage is 36%;
- H. Seven years but less than 8 years, the percentage is 42%;
- I. Eight years but less than 9 years, the percentage is 48%;
- J. Nine years but less than 10 years, the percentage is 54%;
- K. Ten years but less than 11 years, the percentage is 60%;
- L. Eleven years but less than 12 years, the percentage is 68%;
- M. Twelve years but less than 13 years, the percentage is 76%;

N. Thirteen years but less than 14 years, the percentage is 84%;

O. Fourteen years but less than 15 years, the percentage is 92%; and

P. Fifteen years or more, the percentage is 100%.

§2-204. Decedent's net probate estate

The value of the augmented estate includes the value of the decedent's probate estate reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property and enforceable claims.

§2-205. Decedent's nonprobate transfers to others

The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under section 2-204, of any of the following types, in the amount provided respectively for each type of transfer:

1. Passed outside probate at death. Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property is included under this category only if it consists of any of the following types:

A. Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse;

B. The decedent's fractional interest in property held in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse;

C. The decedent's ownership interest in property or accounts held in POD, TOD or co-ownership registration with the right of survivorship. The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; or

D. Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount in-

cluded is the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;

2. Transferred during marriage. Property transferred in any of the following forms by the decedent during marriage:

A. Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse; or

B. Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount; and

3. Passed during marriage within 2 years before death. Property that passed during marriage and during the 2-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

A. Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection 1, paragraph A, B or C, or under subsection 2, if the right, interest or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those paragraphs if the property were valued at the time the right, interest or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any per-

son other than the decedent or the decedent's estate, spouse or surviving spouse. For purposes of this paragraph, termination, with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default or otherwise, but, with respect to a power described in subsection 1, paragraph A, termination occurs when the power terminated by exercise or release, but not otherwise;

B. Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under subsection 1, paragraph D had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; or

C. Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the transfers to any one donee in either of the 2 years exceeded 50% of the amount excludable from taxable gifts under 26 United States Code, Section 2503(b) or its successor on the date next preceding the date of the decedent's death.

§2-206. Decedent's nonprobate transfers to the surviving spouse

Excluding property passing to the surviving spouse under the federal Social Security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

1. Joint tenancy. The decedent's fractional interest in property held in joint tenancy with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

2. Co-ownership registration. The decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner; and

3. Other nonprobate transfers. All other property that would have been included in the augmented estate under section 2-205, subsection 1 or 2 had it passed to or for the benefit of a person other than the

decedent's spouse, surviving spouse, the decedent or the decedent's creditors, estate or estate creditors.

§2-207. Surviving spouse's property and nonprobate transfers to others

1. Included property. Except to the extent included in the augmented estate under section 2-204 or 2-206, the value of the augmented estate includes the value of:

A. Property that was owned by the decedent's surviving spouse at the decedent's death, including:

(1) The surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(2) The surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(3) Property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property or payments under the federal Social Security system; and

B. Property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection 1, paragraph A, subparagraph (1) or (2), had the spouse been the decedent.

2. Time of valuation. Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subsection 1, paragraph A, subparagraphs (1) and (2), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of subsection 1, paragraph B, proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under section 2-205, subsection 1, paragraph D are not valued as if the spouse were deceased.

3. Reduction for enforceable claims. The value of property included under this section is reduced by enforceable claims against the surviving spouse.

§2-208. Exclusions, valuation and overlapping application

1. Exclusions. The value of any property is excluded from the decedent's nonprobate transfers to others:

A. To the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or

B. If the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse.

2. Valuation. The value of property is determined as follows.

A. The value of property included in the augmented estate under section 2-205, 2-206 or 2-207 is reduced in each category by enforceable claims against the included property.

B. The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, except as provided in paragraph C, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan or any similar arrangement, exclusive of the federal Social Security system.

C. The value of a surviving spouse's beneficial interest in a trust from which distributions of both income and principal to the surviving spouse are subject to the trustee's discretion, regardless of whether that discretion is expressed in the form of a standard of distribution, is presumed to be 1/2 of the total value of the trust estate unless a different value is established by proof; except that the value of a surviving spouse's beneficial interest in a trust from which distributions of both income and principal to the surviving spouse are subject to the trustee's discretion, without an ascertainable standard, is presumed to be the full value of the trust estate if the spouse is the sole trustee of the trust.

3. Overlapping application; no double exclusion. In case of overlapping application to the same property of the provisions of section 2-205, 2-206 or 2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

§2-209. Sources from which elective share payable

1. Elective-share amount only. In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

A. Amounts included in the augmented estate under section 2-204 that pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under section 2-206; and

B. The marital-property portion of amounts included in the augmented estate under section 2-207.

2. Marital-property portion. The marital-property portion under subsection 1, paragraph B is computed by multiplying the value of the amounts included in the augmented estate under section 2-207 by the percentage of the augmented estate set forth in the schedule in section 2-203, subsection 2 appropriate to the length of time the spouse and the decedent were married to each other.

3. Unsatisfied balance of elective-share amount; net probate estate. If, after the application of subsection 1, the elective-share amount is not fully satisfied, or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's net probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the decedent's nonprobate transfers to others under section 2-205, subsections 1 and 2 and section 2-205, subsection 3, paragraph B are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's net probate estate and that portion of the decedent's nonprobate transfers to others are applied so that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

4. Unsatisfied balance of elective share; nonprobate transfers. If, after the application of subsections 1 and 2, the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is applied so that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

5. Unsatisfied balance treated as general pecuniary devise. The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection 3 or 4 is treated as a general pecuniary devise for purposes of section 3-904.

§2-210. Personal liability of recipients

1. Original recipients; satisfaction of elective-share amount. Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share amount. A person liable to make a con-

tribution may choose to give up the proportional part of the decedent's nonprobate transfers to that person or to pay the value of the amount for which that person is liable.

2. Preemption; obligated and personally liable. If any section or part of any section of this Part is preempted by federal law with respect to a payment, an item of property or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property or any other benefit is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in section 2-209, to the person who would have been entitled to it were that section or part of that section not preempted.

§2-211. Proceeding for elective share; time limit

1. Time of election. Except as provided in subsection 2, the surviving spouse or the surviving spouse's conservator or agent under authority of a power of attorney must make the election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the probate of the decedent's will, whichever limitation later expires. Notice of the time and place set for the hearing must be given to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection 2, the decedent's nonprobate transfers to others are not included within the augmented estate for the purpose of computing the elective share if the petition is filed more than 9 months after the decedent's death.

2. Extension. Within 9 months after the decedent's death, a petition for an extension of time for making an election may be filed by the surviving spouse or the surviving spouse's conservator or agent under authority of a power of attorney. If, within 9 months after the decedent's death, notice is given of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for cause shown may extend the time for election. If the court grants the petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share amount, if the election is made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

3. Withdrawal of demand. A demand for an elective share may be withdrawn at any time before entry of a final determination by the court.

4. Court determination. After notice and hearing, the court shall determine the elective-share amount, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under sections 2-209 and 2-210. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but a person is not subject to contribution in any greater amount than the person would have been under sections 2-209 and 2-210 had relief been secured against all persons subject to contribution.

5. Enforcement. An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this State or other jurisdictions.

§2-212. Right of election personal to surviving spouse

The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under section 2-211, subsection 1. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator or agent under authority of a power of attorney.

§2-213. Waiver of right to elect and of other rights

1. Waiver of election and statutory benefits. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the surviving spouse.

2. Waiver not enforceable. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

A. The surviving spouse did not execute the waiver voluntarily; or

B. The waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the prop-

erty or financial obligations of the decedent beyond the disclosure provided; and

(3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

3. Unconscionability. An issue of unconscionability of a waiver is for decision by the court as a matter of law.

4. Waiver of "all rights." Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to the spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

§2-214. Protection of payors and other 3rd parties

1. Liability of payors and other 3rd parties. Although under section 2-205 a payment, item of property or other benefit is included in the decedent's nonprobate transfers to others, a payor or other 3rd party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other 3rd party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other 3rd party is liable for payments made or other actions taken after the payor or other 3rd party received written notice that a petition for the elective share has been filed.

2. Notice to payors and other 3rd parties. A written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings

relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under section 2-211, subsection 4, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under section 2-211, subsection 1 or, if filed, the demand for an elective share is withdrawn under section 2-211, subsection 3, the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other 3rd party from all claims for amounts so paid or the value of property so transferred or deposited.

3. Petition by beneficiary; court order. Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this Part.

PART 3

SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

§2-301. Entitlement of spouse; premarital will

1. Entitlement of spouse. If a testator's surviving spouse married the testator after the testator executed a will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under section 2-603 or 2-604 to such a child or to a descendant of such a child, unless:

A. It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

B. The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

C. The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

2. Devises by will to spouse; others abate. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 2-603 or 2-604 to a descen-

dant of such a child, abate as provided in section 3-902.

§2-302. Omitted children

1. Omitted children shares. Except as provided in subsection 2, if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

A. If a testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

B. If a testator had one or more children living when the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(1) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will;

(2) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (1), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child;

(3) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this paragraph must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will; and

(4) In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

2. No shares for omitted children. Neither subsection 1, paragraph A nor subsection 1, paragraph B applies if:

A. It appears from the will that the omission was intentional; or

B. The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

3. Child believed to be dead. If at the time of execution of the will the testator fails to provide in the testator's will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

4. Shares abate. In satisfying a share provided by subsection 1, paragraph A, devises made by the will abate under section 3-902.

PART 4

EXEMPT PROPERTY AND ALLOWANCES

§2-401. Applicable law

This Part applies to the estate of the decedent who dies domiciled in this State. Rights to homestead allowance, exempt property and family allowance for a decedent who dies not domiciled in this State are governed by the law of the decedent's domicile at death.

§2-402. Homestead allowance

A decedent's surviving spouse is entitled to a homestead allowance of \$22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$22,500 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the decedent's will unless otherwise provided by intestate succession or by way of elective share.

§2-403. Exempt property

In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding \$15,000 in excess of any security interests in the estate of tangible personal property, including, but not limited to, in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value; however, the decedent, by will, may exclude one or more adult children from the receipt of exempt property. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than \$15,000, or if there is not \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the

estate, if any, to the extent necessary to make up the \$15,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided by intestate succession or by way of elective share.

§2-404. Family allowance

1. Family allowance during administration. In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

2. Not chargeable against benefit or share; right terminates on death. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided by intestate succession or by way of elective share. The death of any person entitled to family allowance terminates that person's right to allowance not yet paid.

§2-405. Source, determination and documentation

If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of minor children or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may

determine the family allowance in a lump sum not exceeding \$27,000 or periodic installments not exceeding \$2,250 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment or failure to act under this section may petition the court for appropriate relief, which relief may include a family allowance other than that which the personal representative determined or could have determined.

**PART 5
WILLS**

§2-501. Who may make a will

An individual of sound mind who is 18 or more years of age or a legally emancipated minor may make a will.

§2-502. Execution; holographic wills

1. Witnessed wills. Except as otherwise provided in subsection 2 and in sections 2-505 and 2-512, a will must be:

- A. In writing;
- B. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
- C. Signed by at least 2 individuals, each of whom signed within a reasonable time after the individual witnessed either the signing of the will as described in paragraph B or the testator's acknowledgment of that signature or acknowledgment of the will.

2. Holographic wills. A will that does not comply with subsection 1 is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

3. Extrinsic evidence. Intent that a document constitute the testator's will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

§2-503. Self-proved will

1. Self-proved at execution. Any will may be simultaneously executed, attested and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate in substantially the following form:

I,, the testator, on this day of, 20... being first duly sworn, do

hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), as my free and voluntary act and that I am eighteen years of age or older or am a legally emancipated minor, of sound mind, and under no constraint or undue influence.

.....
Testator

We,,
the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as (his) (her) last will and that (he) (she) signed it willingly (or willingly directed another to sign for (him) (her)), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older or is a legally emancipated minor, of sound mind and under no constraint or undue influence.

.....
Witness

.....
Witness

The State of
County of

Subscribed, sworn to and acknowledged before me by, the testator, and subscribed and sworn to before me by and witnesses, this day of

(Signed)

.....
(Official capacity of officer)

2. Self-proved subsequent to execution. An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, attached or annexed to the will in substantially the following form:

The State of
County of

We,,
and, the testator and the wit-

nesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as (his) (her) last will and that (he) (she) had signed willingly (or willingly directed another to sign for (him) (her)), as (his) (her) free and voluntary act, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of (his) (her) knowledge the testator was at that time eighteen years of age or older or a legally emancipated minor, of sound mind and under no constraint or undue influence.

.....
Testator
.....
Witness
.....
Witness

Subscribed, sworn to and acknowledged before me by, the testator, and subscribed and sworn to before me by and witnesses, this day of

(Signed)
.....
(Official capacity of officer)

3. Affidavit sufficient. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

§2-504. Who may witness a will

1. Witness. An individual generally competent to be a witness may act as a witness to a will.

2. Interested witness. The signing of a will by an interested witness does not invalidate the will or any portion of it.

§2-505. Choice of law as to execution

A written will is valid if executed in compliance with section 2-502 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national or if executed in compliance with 10 United States Code, Section 1044d.

§2-506. Revocation by writing or by act

1. Revocation. A will or any part thereof is revoked:

A. By the execution of a subsequent will that revokes the previous will or part expressly or by inconsistency; or

B. By the performance of a revocatory act on the will, if the testator performs the act with the intent and for the purpose of revoking the will or part or if another individual performs the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating or destroying the will or any part of it. A burning, tearing or canceling is a revocatory act on the will, whether or not the burn, tear or cancellation touched any of the words on the will.

2. Intent to replace previous will. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

3. Presumption of intent to replace. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

4. Presumption of intent to supplement. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

§2-507. Revocation by change of circumstances

Except as provided in sections 2-802, 2-803 and 2-804, a change of circumstances does not revoke a will or any part of it.

§2-508. Revival of revoked will

1. Subsequent will revoked by revocatory act; wholly revoked previous will. If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under section 2-506, subsection 1, paragraph B, the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of

the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

2. Subsequent will revoked by revocatory act; partly revoked previous will. If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under section 2-506, subsection 1, paragraph B, a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

3. Subsequent will revoked by later will. If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

§2-509. Incorporation by reference

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

§2-510. Uniform Testamentary Additions to Trusts Act

1. Devise to a trust. A will may validly devise property to the trustee of a trust established or to be established:

A. During the testator's lifetime by the testator, by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or

B. At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size or character of the corpus of the trust.

The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

2. Not held under testamentary trust. Unless the testator's will provides otherwise, property devised to a trust described in subsection 1 is not held under a testamentary trust of the testator but becomes a part of the trust to which it is devised and must be adminis-

tered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

3. Revocation or termination before death. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

§2-511. Events of independent significance

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

§2-512. Separate writing identifying devise of certain types of tangible personal property

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be in the handwriting of the testator or be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect upon the dispositions made by the will.

§2-513. Contracts concerning succession

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after July 1, 2019, can be established only by:

1. Material provisions. Provisions of a will stating material provisions of the contract;

2. Express reference, extrinsic evidence. An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

3. Writing evidencing the contract. A writing signed by the decedent evidencing the contract.

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

§2-514. Disposition of will deposited with court

A will deposited for safekeeping with the court in the office of the register before September 19, 1997 may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures

designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that designated person on request; or the court may deliver the will to the appropriate court. The court may not accept a will for safekeeping after September 19, 1997.

§2-515. Duty of custodian of will; liability

After the death of a testator, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate or, if no such person is known, to an appropriate court for filing and recording until probate is sought. A person having custody of a will is not liable, to any person aggrieved, for failure to learn of the death of the testator of that will and the failure, therefore, to deliver that will as required. A person who willfully fails to deliver a will or who willfully defaces or destroys any will of a deceased person is liable to any person aggrieved for the damages that may be sustained by such failure to deliver or by such defacement or destruction. A person who willfully refuses or fails to deliver a will, or who defaces or destroys it, after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

§2-516. Penalty clause for contest

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

§2-517. Statutory wills

1. Form. Any person may execute a will on the following form, and the will must be presumed to be reasonable. This section does not limit any spousal rights, rights to exempt property or other rights set forth elsewhere in this Code.

Maine Statutory Will

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD CONSULT A LAWYER AND ASK THE LAWYER TO EXPLAIN IT TO YOU.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY THAT PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY CONTRACT. FOR EXAMPLE, THE WILL DOES

NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S ELECTIVE SHARE, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS MAINE STATUTORY WILL. YOU SHOULD MARK THROUGH ALL SECTIONS OR PARTS OF SECTIONS THAT YOU DO NOT COMPLETE. YOU MAY REVOKE THIS MAINE STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

6. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

7. IF YOU HAVE ANOTHER CHILD AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

8. THIS WILL IS NOT VALID UNLESS IT IS SIGNED BY AT LEAST TWO WITNESSES. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. IF YOU HAVE ANY DOUBTS WHETHER OR NOT THIS WILL ADEQUATELY SETS OUT YOUR WISHES FOR THE DISPOSITION OF YOUR PROPERTY, YOU SHOULD CONSULT A LAWYER.

MAINE STATUTORY WILL OF

.....

(Print your name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of my property

2.1 REAL PROPERTY. I give all my real property to my spouse, if living; otherwise it shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific real property to the person(s) named:

(name)	(description of item)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.2 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific items to the person(s) named:

(name)	(description of item)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.3 CASH GIFT TO CHARITABLE ORGANIZATIONS OR INSTITUTIONS. I make the following cash gift(s) to the named charitable organizations or institutions in the amount stated. If I fail to sign this provision, no gift is made. If the charitable organization or institution does not survive me or accept the gift, then no gift is made.

(name)	(amount)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.4 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause by placing my initials in the box in front of the letter "A," "B" or "C" signifying which clause I wish to adopt. I place my signature after clause "A" or clause "B," or after each individual distribution in clause "C." If I fail to sign the appropriate distribution(s) or if I sign in more than one clause or if I fail to

place my initials in the appropriate box, this paragraph 2.4 will be invalid and I realize that the remainder of my property will be distributed as if I did not make a will.

Property Disposition Clauses. (select one)

A. I leave all my remaining property to my spouse, if living. If my spouse is not living, then in equal shares to my children and the descendants of any deceased child.

_____ (signature).

B. I leave the following stated amount to my spouse and the remainder in equal shares to my children and the descendants of any deceased child. If my spouse is not living, that share shall be distributed in equal shares to my children and the descendants of any deceased child.

_____ (signature).

C. I leave the following stated amounts to the persons named:

(name)	(amount)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.5 UNDISTRIBUTED PROPERTY. If I have any property that, for any reason, does not pass under the other parts of this will, all of that property shall be distributed as follows: (Draw a line through any unused space.)

_____ (this paragraph only valid if signed)

Article 3. Nomination of guardian, conservator and personal representative

3.1 GUARDIAN. (If you have a child under 18 years of age, you may name at least one person to serve as guardian for the child.)

If a guardian is needed for any child of mine, then I nominate the first guardian named below to serve as guardian of that child. If the person does not serve, then the others shall serve in the order I list them. My

nomination of a guardian is not valid without my signature.

Your Signature

FIRST _____
GUARDIAN (signature)

SECOND _____
GUARDIAN (signature)

THIRD _____
GUARDIAN (signature)

3.2 CONSERVATOR. (A conservator may be named to manage the property of a minor child. You do not need to name a conservator if you wish the guardian to act as conservator. If you wish to name a conservator in addition to a guardian, complete this paragraph 3.2. If you do not wish to name a separate conservator, do not complete this paragraph.)

I nominate the first conservator named below to serve as conservator for any minor children of mine. If the first conservator does not serve, then the others shall serve in the order I list them. My nomination of a conservator is not valid without my signature.

FIRST _____
CONSERVATOR (signature)

SECOND _____
CONSERVATOR (signature)

THIRD _____
CONSERVATOR (signature)

3.3 PERSONAL REPRESENTATIVE. (Name at least one.) I nominate the person or institution named as first personal representative below to administer the provisions of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them. My nomination of a personal representative is not valid without my signature.

FIRST PERSONAL _____
REPRESENTATIVE (signature)

SECOND _____
PERSONAL REPRESENTATIVE (signature)

THIRD PERSONAL _____
REPRESENTATIVE (signature)

I sign my name to this Maine Statutory Will on _____ (date) at _____ (city) in the State of _____.

STATEMENT OF WITNESSES (You must have two witnesses.)

Each of us declares that the person who signed above willingly signed this Maine Statutory Will in our presence or willingly directed another to sign it for him or her or that he or she acknowledged that the signature on this Maine Statutory Will is his or hers or that he or she acknowledged that this Maine Statutory Will is his or her will and we sign below as witnesses to that signing.

Signature _____

Printed name _____

Address _____

Signature _____

Printed name _____

Address _____

Completing the following section and having all signatures acknowledged by a notary public or other individual authorized to take acknowledgments is optional but if completed will simplify the submission of your will to the probate court after your death.

I, _____, the testator, on this _____ day of _____, 20___, being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me) as my free and voluntary act and that I am 18 years of age or older or am a legally emancipated minor, of sound mind and under no constraint or undue influence.

Testator

We, _____, the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as (his)(her) last will and that (he)(she) signed it willingly (or willingly directed another to sign for (him)(her)), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older or is a legally emancipated minor, of sound mind and under no constraint or undue influence.

Witness

Witness

The State of

County of

Subscribed, sworn to and acknowledged before me by the testator, and subscribed and sworn to before me by and witnesses, this day of

(Signed)

.....

(Official capacity of officer)

2. Forms provided. Forms for executing a statutory will must be provided at all probate courts for a cost equivalent to the reasonable cost of printing and storing the forms. The probate courts shall make the statutory will form available via the Internet for free printing by anyone choosing to use the form. A statutory will is deemed to be valid if the blanks are filled in with a typewriter or in the handwriting of the person making the will. Failure to complete or mark through any section or part of a section in the statutory will does not invalidate the entire will. Failure to sign any section or part of a section in the statutory will requiring a signature invalidates only the part not signed, except as specifically provided in paragraph 2.4.

PART 6

RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

§2-601. Scope

In the absence of a finding of a contrary intention, the rules of construction in this Part control the construction of a will.

§2-602. Will may pass all property and after-acquired property

A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

§2-603. Antilapse; deceased devisee; class gifts

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

A. "Alternative devise" means a devise that is expressly created by a will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or

nonresiduary devise in general, pass under the residuary clause.

B. "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

C. "Descendant of a grandparent" means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under the:

(1) Rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift; or

(2) Rules for intestate succession if the devise or exercise of the power is not in the form of a class gift.

D. "Devise" includes an alternative devise, a devise in the form of a class gift and an exercise of a power of appointment.

E. "Devisee" includes:

(1) A class member if the devise is in the form of a class gift;

(2) An individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(3) An appointee under a power of appointment exercised by the testator's will.

F. "Stepchild" means a child of the surviving, deceased or former spouse of the testator or of the donor of a power of appointment and not of the testator or donor.

G. "Surviving devisee" or "surviving descendant" means a devisee or descendant, respectively, who neither predeceased the testator nor is deemed to have predeceased the testator under section 2-702.

H. "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

2. Substitute gift. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply.

A. Except as provided in paragraph D, if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. The surviving descendants take per capita at each generation the property to which the

devisee would have been entitled had the devisee survived the testator.

B. Except as provided in paragraph D, if the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives" or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisee survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take per capita at each generation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

C. For the purposes of section 2-601, words of survivorship, such as in a devise to an individual "if he survives me," or in a devise to "my surviving children," are, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

D. If the will creates an alternative devise with respect to a devise for which a substitute gift is created by paragraph A or B, the substitute gift is superseded by the alternative devise if:

- (1) The alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or
- (2) The alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will.

E. Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

"Descendant," in the phrase "surviving descendant," used in reference to a deceased devisee or class member, means the descendant of a deceased devisee or class member in paragraphs A and B who would take under a class gift created in the testator's will.

3. More than one substitute gift; which one takes effect. If, under subsection 2, substitute gifts are

created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the devised property passes under the primary substitute gift except that if there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

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

A. "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

B. "Primary substitute gift" means the substitute gift created with respect to the primary devise.

C. "Younger-generation devise" means a devise that:

- (1) Is to a descendant of a devisee of the primary devise;
- (2) Is an alternative devise with respect to the primary devise;
- (3) Is a devise for which a substitute gift is created; and
- (4) Would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

D. "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

§2-604. Failure of testamentary provision

1. Failed devise becomes part of residue. Except as provided in section 2-603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

2. Failed residuary devise passes in proportion. Except as provided in section 2-603, if the residue is devised to 2 or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

§2-605. Increase in securities; accessions

1. Additional securities. If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described

securities and are securities of any of the following types:

A. Securities of the same organization acquired by reason of action initiated by the organization or any successor, related or acquiring organization, excluding any acquired by exercise of purchase options;

B. Securities of another organization acquired as a result of a merger, consolidation, reorganization or other distribution by the organization or any successor, related or acquiring organization; or

C. Securities of the same organization acquired as a result of a plan of reinvestment.

2. Distributions in cash. Distributions in cash before death with respect to a described security are not part of the devise under subsection 1.

§2-606. Nonademption of specific devises; unpaid proceeds of sale, condemnation or insurance; sale by conservator or agent

1. Specifically devised property. A specific devisee has a right to specifically devised property in the testator's estate at the testator's death and to:

A. Any balance of the purchase price, together with any security agreement, owed by a purchaser at the testator's death by reason of sale of the property;

B. Any amount of a condemnation award for the taking of the property unpaid at death;

C. Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

D. Any property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation;

E. Any real property or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real property or tangible personal property; and

F. If not covered by paragraphs A to E, a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.

2. General pecuniary devise from specifically devised property. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attor-

ney for an incapacitated principal, or a condemnation award, insurance proceeds or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds or the recovery.

3. Reduction of right to general pecuniary devise. The right of a specific devisee under subsection 2 is reduced by any right the devisee has under subsection 1.

4. Survival of testator; incapacity ceased. For the purposes of the references in subsection 2 to a conservator, subsection 2 does not apply if, after the sale, mortgage, condemnation, casualty or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication for at least one year.

5. Durable power of attorney. For the purposes of the references in subsection 2 to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

A. "Incapacitated principal" means a principal who is an incapacitated person;

B. An adjudication of incapacity before death is not necessary; and

C. The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

§2-607. Nonexoneration

A specific devise passes subject to any mortgage interest existing at the date of death without right of exoneration, regardless of a general directive in the will to pay debts.

§2-608. Exercise power of appointment

In the absence of a requirement that a power of appointment be exercised by a reference to the power or by an express or specific reference to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to exercise a power of appointment held by the testator only if:

1. General power. The power is a general power exercisable in favor of the powerholder's estate and the creating instrument does not contain an effective gift if the power is not exercised; or

2. Intention to include property subject to the power. The testator's will manifests an intention to include the property subject to the power.

§2-609. Ademption by satisfaction

1. Property given during testator's lifetime. Property a testator gave in the testator's lifetime to a

person is treated as a satisfaction of a devise in whole or in part only if:

- A. The will provides for deduction of the gift;
- B. The testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or
- C. The devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

2. Partial satisfaction; value. For purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

3. Devisee fails to survive testator. If the devisee fails to survive the testator, the gift described in subsection 1 is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 2-603 and 2-604, unless the testator's contemporaneous writing provides otherwise.

PART 7

RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

§2-701. Scope

In the absence of a finding of a contrary intention, the rules of construction in this Part control the construction of a governing instrument. The rules of construction in this Part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

§2-702. Requirement of survival by 120 hours

1. Requirement of survival by 120 hours under Code. For the purposes of this Code, except as provided in subsection 4, an individual who has not been established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.

2. Requirement of survival by 120 hours under governing instrument. Except as provided in subsection 4, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who has not been established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event.

3. Co-owners with right of survivorship; requirement of survival by 120 hours. Except as provided in subsection 4, if:

A. It is not established by clear and convincing evidence that one of 2 co-owners with right of survivorship survived the other co-owner by 120 hours, 1/2 of the property passes as if one had survived by 120 hours and 1/2 as if the other had survived by 120 hours; or

B. There are more than 2 co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants, tenants by the entireties and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

4. Exceptions. Survival by 120 hours is not required if:

A. The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

B. The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. Survival of the event and the specified period must be established by clear and convincing evidence;

C. The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under Title 33, section 111, subsection 1, paragraph A, subsection 2, paragraph A or subsection 3, paragraph A or to become invalid under Title 33, section 111, subsection 1, paragraph B, subsection 2, paragraph B or subsection 3, paragraph B. Survival must be established by clear and convincing evidence; or

D. The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. Survival must be established by clear and convincing evidence.

5. Protection of payors and other 3rd parties. This subsection governs liability of payors and other 3rd parties.

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of

property or for having taken any other action if that payment, transfer or other action is made in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument before the payor or other 3rd party received written notice of a claimed lack of entitlement under this section. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received written notice of a claimed lack of entitlement under this section.

B. Written notice of a claimed lack of entitlement under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by the payor or other 3rd party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other 3rd party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

6. Protection of bona fide purchaser; personal liability of recipient. This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property for value and without notice, or who receives a payment, and item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A person who, not for value, receives a payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered

by this section, a person who, not for value, receives the payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

§2-703. Choice of law as to meaning and effect of governing instrument

The meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in Part 2, the provisions relating to exempt property and allowances described in Part 4 or any other public policy of this State otherwise applicable to the disposition.

§2-704. Power of appointment; compliance with specific reference requirement

A powerholder's substantial compliance with a formal requirement of appointment imposed in a governing instrument by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

1. Knows of and intends to exercise power. The powerholder knows of and intends to exercise the power; and

2. Does not impair a material purpose. The powerholder's manner of attempted exercise does not impair a material purpose of the donor in imposing the requirement.

§2-705. Class gifts construed to accord with intestate succession; exceptions

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

A. "Distribution date" means the date when an immediate or postponed class gift takes effect in possession or enjoyment.

B. "Relative" means a grandparent or the descendant of a grandparent.

2. Terms of relationship. A class gift that uses a term of relationship to identify the class members includes in the class a child of parents regardless of their marital status, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships.

3. Relatives by marriage. Terms of relationship in a governing instrument that do not differentiate rela-

tionships by parentage, including relatives of parents, from those by marriage, such as uncles, aunts, nieces or nephews, are construed to exclude relatives by marriage, unless:

A. When the governing instrument was executed, the class was then and foreseeably would be empty; or

B. The language or circumstances otherwise establish that relatives by marriage were intended to be included.

4. Relatives of shared parentage. Terms of relationship in a governing instrument that do not differentiate relationships by whether all parents are shared, such as brothers, sisters, nieces or nephews, are construed to include all types of relationships regardless of whether relatives share all parents.

5. Transferor not parent. In construing a dispositive provision of a transferor who is not the parent, the transferor or a relative of the transferor must have established a parent-child relationship with the child before the child reached 18 years of age.

6. Class-closing rules. The following provisions apply for purposes of the class-closing rules.

A. A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

B. If the distribution date is the date of the deceased parent's death, a child in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death is treated as living at that time if the child lives 120 hours after birth.

C. An individual who is in the process of being adopted when the class closes is treated as a child of the parent when the class closes if the adoption is subsequently granted.

§2-706. Life insurance; retirement plan; account with POD designation; TOD designation; deceased beneficiary

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

A. "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent or any other form.

B. "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(1) A class member if the beneficiary designation is in the form of a class gift; and

(2) An individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent.

"Beneficiary" excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint survivorship account.

C. "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

D. "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

E. "Descendant of a grandparent" means an individual who qualifies as a descendant of a grandparent of the decedent under the:

(1) Rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift; or

(2) Rules for intestate succession if the beneficiary designation is not in the form of a class gift.

F. "Stepchild" means a child of the decedent's surviving, deceased or former spouse and not of the decedent.

G. "Surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants, respectively, who neither predeceased the decedent nor are deemed to have predeceased the decedent under section 2-702.

2. Substitute gift. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent or a stepchild of the decedent, the following apply.

A. Except as provided in paragraph D, if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

B. Except as provided in paragraph D, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives" or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which that beneficiary would have been entitled had the deceased beneficiary survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

C. For the purposes of section 2-701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me" or "if she survives me," or in a beneficiary designation to "my surviving children," are, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

D. If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created under paragraph A or B, the substitute gift is superseded by the alternative beneficiary designation if:

- (1) The alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or
- (2) The alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

"Descendants," in the phrase "surviving descendants," used in reference to a deceased beneficiary or class member in paragraphs A and B, means the descendants of a deceased beneficiary or class member who would take under a class gift created in the beneficiary designation.

3. More than one substitute gift; which one takes effect. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the property passes under the primary substi-

tute gift except that if there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

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

A. "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

B. "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

C. "Younger-generation beneficiary designation" means a beneficiary designation that:

- (1) Is to a descendant of a beneficiary of the primary beneficiary designation;
- (2) Is an alternative beneficiary designation with respect to the primary beneficiary designation;
- (3) Is a beneficiary designation for which a substitute gift is created; and
- (4) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

D. "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

4. Protection of payors. This subsection governs the liability of payors.

A. A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

B. The written notice of the claim under paragraph A must be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by the payor or

other 3rd party to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

5. Protection of bona fide purchaser; personal liability of recipient. This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property for value and without notice, or who receives a payment, an item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A person who, not for value, receives a payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

§2-707. Survivorship with respect to future interests under terms of trust; substitute takers

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

A. "Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether the event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause in a will does

not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

B. "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

C. "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

D. "Distribution date," with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

E. "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

F. "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust or creating a trust.

G. "Surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants, respectively, who neither predeceased the distribution date nor are deemed to have predeceased the distribution date under section 2-702.

2. Survivorship required; substitute gift. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply.

A. Except as provided in paragraph D, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

B. Except as provided in paragraph D, if the future interest is in the form of a class gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives" or "family," or a class described by language of similar import, a substitute gift is created

in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which that beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

C. For the purposes of section 2-701, words of survivorship attached to a future interest are, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. As used in this paragraph, "words of survivorship" includes words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent or any other form.

D. If the governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created under paragraph A or B, the substitute gift is superseded by the alternative future interest if:

- (1) The alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or
- (2) The alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

"Descendants," in the phrase "surviving descendants," used in reference to a deceased beneficiary or class member in paragraphs A and B, means the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.

3. More than one substitute gift; which one takes effect. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the property passes under the primary substitute gift, except that if there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

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

A. "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

B. "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

C. "Younger-generation future interest" means a future interest that:

- (1) Is to a descendant of a beneficiary of the primary future interest;
- (2) Is an alternative future interest with respect to the primary future interest;
- (3) Is a future interest for which a substitute gift is created; and
- (4) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

D. "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

4. If no other taker, property passes under residuary clause or to transferor's heirs. Except as provided in subsection 5, if, after the application of subsections 2 and 3, there is no surviving taker, the property passes in the following order.

A. If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust; and

B. If a taker is not produced by the application of paragraph A, the property passes to the transferor's heirs under section 2-711.

For purposes of this subsection, "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

5. No other taker and future interest created by exercise of power of appointment. If, after the application of subsections 2 and 3, there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

A. The property passes under the donor's gift-in-default clause, if any. The donor's gift-in-default

clause is treated as creating a future interest under the terms of a trust; and

B. If no taker is produced by the application of paragraph A, the property passes as provided in subsection 4.

§2-708. Class gifts to "descendants," "issue" or "heirs of the body"; form of distribution if none specified

If a class gift in favor of "descendants," "issue" or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.

§2-709. Per capita at each generation; per stirpes or by representation

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

A. "Deceased child" or "deceased descendant" means a child or a descendant, respectively, who either predeceased the distribution date or is deemed to have predeceased the distribution date pursuant to section 2-702.

B. "Distribution date," with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

C. "Surviving ancestor," "surviving child" or "surviving descendant" means an ancestor, a child or a descendant, respectively, who neither predeceased the distribution date nor is deemed to have predeceased the distribution date pursuant to section 2-702.

2. Per capita at each generation. If an applicable statute or a governing instrument calls for property to be distributed "per capita at each generation," the property is divided into as many equal shares as there are:

A. Surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

B. Deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among

the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

3. Per stirpes or by representation. If a governing instrument calls for property to be distributed "per stirpes" or "by representation," the property is divided into as many equal shares as there are:

A. Surviving children of the designated ancestor; and

B. Deceased children who left surviving descendants.

Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

4. Deceased descendant with no surviving descendant disregarded. For the purposes of subsections 2 and 3, an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

§2-710. Worthier-title doctrine abolished

The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives" or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

§2-711. Interests in "heirs" and like

If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs," "heirs at law," "next of kin," "relatives" or "family," or language of similar import, the property passes to those persons, including the State, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

PART 8**GENERAL PROVISIONS CONCERNING
PROBATE AND NONPROBATE TRANSFERS****§2-801. Effect of divorce, annulment and decree of separation**

1. Divorce; annulment; separation. An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of spouses is not a divorce for purposes of this section.

2. Not a surviving spouse. For purposes of Parts 1, 2, 3 and 4 and of section 3-203, a surviving spouse does not include:

A. An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, if that decree or judgment is not recognized as valid in this State, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as spouses;

B. An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd individual; or

C. An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

§2-802. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance and beneficiary designations

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

A. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

B. "Governing instrument" means a governing instrument executed by the decedent.

C. "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the killer and whether or not the decedent then had capacity to exercise the power.

2. Forfeiture of statutory benefits. An individual who feloniously and intentionally kills the decedent forfeits all benefits under this Article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

3. Revocation of benefits under governing instruments. The felonious and intentional killing of the decedent:

A. Revokes any revocable:

(1) Disposition or appointment of property made by the decedent to the killer in a governing instrument;

(2) Provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(3) Nomination of the killer in a governing instrument nominating or appointing the killer to serve in any fiduciary or representative capacity, including as a personal representative, executor, trustee or agent; and

B. Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into equal tenancies in common.

4. Effect of severance. A severance under subsection 3, paragraph B does not affect any 3rd-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

5. Effect of revocation. Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

6. Wrongful acquisition of property. A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer may not profit from the killer's wrong.

7. Felonious and intentional killing; how determined. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional

killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

8. Protection of payors and other 3rd parties.

This subsection governs the liability of payors and other 3rd parties.

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing or for having taken any other action if that payment, transfer or other action is made in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other 3rd party received written notice of a claimed forfeiture or revocation under this section. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received written notice of a claimed forfeiture or revocation under this section.

B. Written notice of a claimed forfeiture or revocation under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by the payor or other 3rd party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other 3rd party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

9. Protection of bona fide purchaser; personal liability of recipient. This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property for value and without notice, or who receives a payment, an item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A person who, not for value, receives a payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

§2-803. Effect of criminal conviction on intestate succession, wills, joint assets, beneficiary designations and other property acquisition when restitution is owed to the decedent

A person who has been convicted of a crime of which the decedent was a victim is not entitled to the following benefits to the extent that the benefits do not exceed the amount of restitution the person owes to the decedent as a result of the sentence for the crime:

1. Decedent's will or this Article. Any benefits under the decedent's will or under this Article;

2. Jointly owned property. Any property owned jointly with the decedent;

3. Bond, life insurance policy or other contractual arrangement. Any benefit as a beneficiary of a bond, life insurance policy or other contractual arrangement in which the principal obligee or the person upon whose life the policy is issued is the decedent; and

4. Acquisition of property. Any benefit from any acquisition of property in which the decedent had an interest.

§2-804. Revocation of probate and nonprobate transfers by divorce; no revocation by other changes of circumstances

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

A. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

B. "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2-801. A decree of separation that does not terminate the status of spouses is not a divorce for purposes of this section.

C. "Divorced individual" includes an individual whose marriage has been annulled.

D. "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

E. "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity.

F. "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the divorced individual's former spouse or relative of the divorced individual's former spouse, whether or not the divorced individual was then empowered to designate the divorced individual in place of the divorced individual's former spouse or in place of the relative of the divorced individual's former spouse and whether or not the divorced individual then had the capacity to exercise the power.

2. Revocation upon divorce. Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

A. Revokes any revocable:

(1) Disposition or appointment of property made by a divorced individual to the divorced individual's former spouse in a governing instrument and any disposition or appointment

created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(2) Provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(3) Nomination in a governing instrument nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent or guardian; and

B. Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.

3. Effect of severance. A severance under subsection 2, paragraph B does not affect any 3rd-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

4. Effect of revocation. Provisions of a governing instrument are given effect as if the divorced individual's former spouse and relatives of the divorced individual's former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the divorced individual's former spouse and relatives of the divorced individual's former spouse died immediately before the divorce or annulment.

5. Revival if divorce nullified. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

6. No revocation for other change of circumstances. A change of circumstances other than as described in this section or in section 2-802 does not effect a revocation pursuant to this section.

7. Protection of payors and other 3rd parties. This subsection governs the liability of payors and other 3rd parties.

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a remarriage, divorce or annulment or for having

taken any other action if that payment, transfer or other action is made in good faith reliance on the validity of the governing instrument before the payor or other 3rd party received written notice of the remarriage, divorce or annulment. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received written notice of a claimed remarriage, divorce or annulment under this section.

B. Written notice of the remarriage, divorce or annulment under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of the remarriage, divorce or annulment, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by the payor or other 3rd party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedent's estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other 3rd party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

8. Protection of bona fide purchaser; personal liability of recipient. This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property from a divorced individual's former spouse, relative of a divorced individual's former spouse or any other person for value and without notice, or who receives from a divorced individual's former spouse, relative of a divorced individual's former spouse or any other person a payment, an item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A divorced individual's former spouse, relative of a divorced individual's former spouse or other person who, not for value, receives a payment, item of property or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a divorced individual's former spouse, relative of the divorced individual's former spouse or any other person who, not for value, receives the payment, item of property or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

§2-805. Reformation to correct mistakes

The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

§2-806. Modification to achieve transferor's tax objectives

To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

§2-807. Actions for wrongful death

1. Liability notwithstanding death. Whenever the death of a person is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the person or the corporation that would have been liable if death had not ensued is liable for damages as provided in this section, notwithstanding the death of the person injured and although the death was caused under circumstances that amount to a felony.

2. Wrongful death action; damages; limitations. Every wrongful death action must be brought by and in the name of the personal representative or special administrator of the deceased person, and is distributable, after payment for funeral expenses and the costs of recovery including attorney's fees, directly to the decedent's heirs without becoming part of the probate estate, except as may be specifically provided in this subsection. The amount recovered in every wrongful death action, except as specifically provided in this subsection, is for the exclusive benefit of the deceased's heirs to be distributed to the individuals and in the proportions as provided in sections 2-102 and 2-103. The jury may give damages as it determines a fair and just compensation with reference to the pecu-

niary injuries resulting from the death. Damages are payable to the estate of the deceased person only if the jury specifically makes an award payable to the estate for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses or, in the case of a settlement, the settlement documents specifically provide for such an allocation to the estate for the same. In addition, the jury may give damages not exceeding \$500,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought. The jury may also give punitive damages not exceeding \$250,000. An action under this section must be commenced within 2 years after the decedent's death, except that if the decedent's death is caused by a homicide, the action may be commenced within 6 years of the date the personal representative or special administrator of the decedent discovers that there is a just cause of action against the person who caused the homicide. If a claim under this section is settled without an action having been commenced, the amount paid in settlement must be distributed as provided in this subsection. A settlement on behalf of minor children is not valid unless approved by the court, as provided in Title 14, section 1605.

3. Damages for conscious suffering. Whenever death ensues following a period of conscious suffering, as a result of personal injuries due to the wrongful act, neglect or default of any person, the person who caused the personal injuries resulting in such conscious suffering and death is, in addition to the action at common law and damages recoverable therein, liable in damages in a separate count in the same action for such death, brought, commenced and determined and subject to the same limitation as to the amount recoverable for such death and exclusively for the beneficiaries in the manner set forth in subsection 2, separately found, but in such cases there is only one recovery for the same injury.

4. Maine Tort Claims Act. Any action under this section brought against a governmental entity under Title 14, sections 8101 to 8118 is limited as provided in those sections.

PART 9

UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

§2-901. Short title

This Part may be known and cited as "the Uniform Disclaimer of Property Interests Act."

§2-902. Definitions

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

1. Disclaimant. "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

2. Disclaimed interest. "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

3. Disclaimer. "Disclaimer" means the refusal to accept an interest in or power over property.

4. Fiduciary. "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person.

5. Jointly held property. "Jointly held property" means property held in the name of 2 or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

6. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

7. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band or Alaskan native village recognized by federal law or formally acknowledged by a state.

8. Trust. "Trust" means:

A. An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

B. A trust created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust.

§2-903. Scope

This Part applies to disclaimers of any interest in or power over property, whenever created.

§2-904. Part supplemented by other law

1. Principles of law and equity. Unless displaced by a provision of this Part, the principles of law and equity supplement this Part.

2. Right to waive, release, disclaim or renounce property interest. This Part does not limit any right of a person to waive, release, disclaim or renounce an interest in or power over property under a law other than this Part.

§2-905. Power to disclaim; general requirements; when irrevocable

1. Power to disclaim. A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

2. Fiduciary authority to disclaim. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this State or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

3. General requirements. To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer and be delivered or filed in the manner provided in section 2-912. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

A. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

B. "Sign" means, with present intent to authenticate or adopt a record, to:

- (1) Execute or adopt a tangible symbol; or
- (2) Attach to or logically associate with the record an electronic sound, symbol or process.

4. Partial disclaimer. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power or any other interest or estate in the property.

5. When irrevocable. A disclaimer becomes irrevocable when it is delivered or filed pursuant to section 2-912 or when it becomes effective as provided in sections 2-906 to 2-911, whichever occurs later.

6. Disclaimer not a transfer, assignment or release. A disclaimer made under this Part is not a transfer, assignment or release.

§2-906. Disclaimer of interest in property

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

A. "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

B. "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

2. General provisions governing disclaimers. Except for a disclaimer governed by section 2-907 or 2-908, the following provisions apply to a disclaimer of an interest in property.

A. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

B. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

C. If the instrument does not contain a provision described in paragraph B, the following provisions apply.

(1) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(2) If the disclaimant is an individual, except as otherwise provided in subparagraphs (3) and (4), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(3) If by law or under the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(4) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the State but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession

law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

D. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

§2-907. Disclaimer of rights of survivorship in jointly held property

1. Disclaimer by surviving holder of jointly held property. Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

A. A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; and

B. All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

2. Effective date of disclaimer. A disclaimer under subsection 1 takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

3. Disposition of disclaimed property. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

§2-908. Disclaimer of interest by trustee

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

§2-909. Disclaimer of power of appointment or other power not held in fiduciary capacity

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following provisions apply.

1. Disclaimer of unexercised power. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. Disclaimer of exercised power. If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

3. Construction of instrument creating the power. The instrument creating the power is construed as if the power expired when the disclaimer became effective.

§2-910. Disclaimer by appointee, object or taker in default of exercise of power of appointment

1. Disclaimer by appointee. A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

2. Disclaimer by object or taker in default. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

§2-911. Disclaimer of power held in fiduciary capacity

1. Disclaimer of unexercised power. If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. Disclaimer of exercised power. If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

3. Effect of disclaimer by fiduciary. A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust or other person for whom the fiduciary is acting.

§2-912. Delivery or filing

1. Beneficiary designation. As used in this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

A. An annuity or insurance policy;

B. An account with a designation for payment;

C. A security registered in beneficiary form;

D. A pension, profit-sharing, retirement or other employment-related benefit plan; or

E. Any other nonprobate transfer at death.

2. Delivery of disclaimer; generally. Subject to subsections 3 to 12, delivery of a disclaimer may be effected by personal delivery, first-class mail or any other method likely to result in its receipt.

3. Disclaimer of interest from intestate succession or will. In the case of an interest created under

the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

A. A disclaimer must be delivered to the personal representative of the decedent's estate or the special administrator of the decedent's estate; or

B. If no personal representative is then serving, a disclaimer must be filed with the court having jurisdiction to appoint the personal representative.

4. Disclaimer of interest in a testamentary trust. In the case of an interest in a testamentary trust:

A. A disclaimer must be delivered to the trustee then serving or, if no trustee is then serving, to the personal representative of the decedent's estate; or

B. If no trustee or personal representative is then serving, the disclaimer must be filed with the court having jurisdiction to enforce the trust.

5. Disclaimer of interest in inter vivos trust. In the case of an interest in an inter vivos trust:

A. A disclaimer must be delivered to the trustee then serving;

B. If no trustee is then serving, the disclaimer must be filed with the court having jurisdiction to enforce the trust; or

C. If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

6. Disclaimer of interest created by beneficiary designation. In the case of an interest created by a beneficiary designation that is disclaimed before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

7. Disclaimer of interest created by irrevocable beneficiary designation. In the case of an interest created by a beneficiary designation that is disclaimed after the designation becomes irrevocable:

A. The disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

B. The disclaimer of an interest in real property must be recorded in the registry of deeds of the county where the real property that is the subject of the disclaimer is located.

8. Disclaimer by surviving holder of jointly held property. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

9. Disclaimer by object or taker in default. In the case of a disclaimer by an object or taker in default

of exercise of a power of appointment at any time after the power was created:

A. The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

B. If no fiduciary is then serving, the disclaimer must be filed with the court having authority to appoint the fiduciary.

10. Disclaimer by appointee. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

A. The disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

B. If no fiduciary is then serving, the disclaimer must be filed with the court having authority to appoint the fiduciary.

11. Disclaimer by fiduciary. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection 3, 4 or 5 as if the power disclaimed were an interest in property.

12. Disclaimer of a power by an agent. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

§2-913. When disclaimer barred or limited

1. Bar pursuant to written waiver. A disclaimer is barred by a written waiver of the right to disclaim.

2. Bar pursuant to events. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

A. The disclaimant accepts the interest sought to be disclaimed;

B. The disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the interest sought to be disclaimed or contracts to do so; or

C. A judicial sale of the interest sought to be disclaimed occurs.

3. Previous exercise not a bar to disclaimer of power held in fiduciary capacity. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

4. Previous exercise not a bar to disclaimer of power not held in fiduciary capacity; exception. A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

5. Bar pursuant to law. A disclaimer is barred or limited if so provided by law other than this Part.

6. Effect of bar. A disclaimer of a power over property that is barred by this section is ineffective. A disclaimer of an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this Part had the disclaimer not been barred.

§2-914. Tax qualified disclaimer

Notwithstanding any other provision of this Part, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated, pursuant to the provisions of 26 United States Code, as amended, or any successor statute, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this Part.

§2-915. Recording of disclaimer

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded or registered, the disclaimer may be so filed, recorded or registered. Except as otherwise provided in section 2-912, subsection 7, paragraph B, failure to file, record or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

§2-916. Application to existing relationships

Except as otherwise provided in section 2-913, an interest in or power over property existing on July 1, 2019 as to which the time for delivering or filing a disclaimer under law superseded by this Part has not expired may be disclaimed after July 1, 2019.

§2-917. Relation to Electronic Signatures in Global and National Commerce Act

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001, et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b).

ARTICLE 3

PROBATE OF WILLS AND ADMINISTRATION

PART 1

GENERAL PROVISIONS

§3-101. Devolution of estate at death; restrictions

The power of a person to leave property by will and the rights of creditors, devisees and heirs to the person's property are subject to the restrictions and

limitations contained in this Code to facilitate the prompt settlement of estates. Upon the death of a person, the person's real and personal property devolves to the persons to whom it is devised by the person's last will or to those indicated as substitutes for them in cases involving lapse, renunciation or other circumstances affecting the devolution of testate estate or, in the absence of testamentary disposition, to the person's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, to elective share of the surviving spouse and to administration.

§3-102. Necessity of order of probate for will

Except as provided in section 3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registers or an adjudication of probate by the court.

§3-103. Necessity of appointment for administration

Except as otherwise provided in Article 4, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registers, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

§3-104. Claims against decedent; necessity of administration

A proceeding to enforce a claim against the estate of a decedent or the decedent's successors may not be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this Article. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 3-1004 or from a former personal representative individually liable as provided in section 3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce the creditor's right to the security except as to any deficiency judgment that might be sought.

§3-105. Proceedings affecting devolution and administration; jurisdiction of subject matter

Persons interested in decedents' estates may apply to the register for determination in the informal proceedings provided in this Article and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this Article. The court has exclusive jurisdiction of formal proceedings to determine how

decedents' estates subject to the laws of this State are to be administered, expended and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property is distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

§3-106. Proceedings within the jurisdiction of court; service; jurisdiction over persons

In proceedings within the exclusive jurisdiction of the court where notice is required by this Code or by rule, and in proceedings to construe probated wills or determine heirs that concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this State by notice in conformity with section 1-401. An order is binding on all who are given notice of the proceeding though fewer than all interested persons are notified.

§3-107. Scope of proceedings; proceedings independent; exception

Unless supervised administration as described in Part 5 is involved:

1. Proceedings independent. Each proceeding before the court or register is independent of any other proceeding involving the same estate;

2. Petitions for formal orders. Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings that are particularly described by other sections of this Article, a petition is not defective because it fails to embrace all matters that might then be the subject of a final order;

3. Petitions for appointment of personal representative. Proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

4. Order. A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

§3-108. Probate, testacy and appointment proceedings; ultimate time limit

1. Limitations period; exceptions. An informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment,

may not be commenced more than 3 years after the decedent's death, except:

A. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

B. Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

C. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

D. An informal appointment or a formal testacy or appointment proceeding may be commenced more than 3 years after the decedent's death if no proceeding concerning the succession or estate administration has occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

E. A formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from a person other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

2. Limitations period inapplicable. The limitations under subsection 1 do not apply to proceedings to construe probated wills or determine heirs of an intestate.

3. Special provision regarding date of death. In cases under subsection 1, paragraph A or B, the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code that relate to the date of death.

§3-109. Statutes of limitation on decedent's cause of action

A statute of limitation running on a cause of action belonging to a decedent that had not been barred as of the date of death does not apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action that but for this section would have been barred less than 4 months after death is barred after 4 months unless tolled.

§3-110. Discovery of property

1. Examination by court. Upon petition by a county attorney, personal representative, heir, devisee, creditor or other person interested in the estate of a decedent, anyone suspected of having concealed, withheld or conveyed away any property of the decedent, of having fraudulently received any such property, or of aiding others in so doing, may be cited by the court to appear and be examined under oath. The court may require the person to produce for the inspection of the court and parties all documents within the person's control relating to the matter under examination. The time for filing such petitions is governed by section 1-105.

2. Penalties for refusal. If a person duly cited pursuant to subsection 1 refuses to appear and submit to the court's examination, to answer all lawful interrogatories or to produce the documents ordered, the person is subject to contempt of the court and is liable to any injured party in a civil action for all the damages, expenses and charges arising from such refusal.

PART 2**VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY TO ADMINISTER AND DEMAND FOR NOTICE****§3-201. Venue for first and subsequent estate proceedings; location of property**

1. Venue for first estate proceedings. Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

A. In the county where the decedent was domiciled at the time of death; or

B. If the decedent was not domiciled in this State, in any county where property of the decedent was located at the time of the decedent's death.

2. Venue for subsequent proceedings. Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in subsection 3 or section 1-303.

3. Transfer after informal proceeding. If the first proceeding was informal, on application of an interested person and after notice to the proponent in

the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

4. Location of property. For the purpose of aiding determinations concerning location of property that may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

§3-202. Appointment or testacy proceedings; conflicting claim of domicile in another state

If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this State, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this State must stay, dismiss or permit suitable amendment in the proceeding in this State unless it is determined that the proceeding in this State was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this State.

§3-203. Priority among persons seeking appointment as personal representative

1. Priority. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

A. The person with priority as determined by a probated will including a person nominated by a power conferred in a will;

B. The surviving spouse of the decedent who is a devisee of the decedent;

C. Other devisees of the decedent;

D. The surviving spouse of the decedent;

E. The surviving domestic partner of the decedent;

F. Other heirs of the decedent;

G. Forty-five days after the death of the decedent, any creditor; and

H. Six months after the death of the decedent if no testacy proceeding have been held or no personal representative has been appointed, the State Tax Assessor upon application by the State Tax Assessor.

2. Objection. An objection to an appointment may be made only in formal proceedings. In case of objection the priorities stated in subsection 1 apply except that:

A. If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; or

B. In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than 1/2 of the probable distributable value or, in default of this accord, any suitable person.

3. Nomination and renunciation. A person entitled to letters under subsection 1, paragraphs B to F may nominate a qualified person to act as personal representative. Any person may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court. When 2 or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment.

4. Authority of conservators and guardians. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, or an agent under a power of attorney that expressly grants the agent the authority to do so, may exercise the same right to nominate, to object to another's appointment or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

5. Appointment without priority. Appointment of a person who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing a person without priority, the court must determine that those persons having priority, although given notice of the proceedings, have failed to request appointment or to nominate another person for appointment and that administration is necessary.

6. Qualifications. A person is qualified to serve as a personal representative who:

A. Is 18 years of age or older; and

B. Has not been found unsuitable by the court in formal proceedings.

7. Priority of personal representative appointed by domiciliary court. A personal representa-

tive appointed by a court of the decedent's domicile has priority over all other persons except when the decedent's will nominates different persons to be personal representative in this State and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

8. Applicability. This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

§3-204. Demand for notice of order or filing concerning decedent's estate

A person desiring notice of an order or filing pertaining to a decedent's estate in which the person has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent, stating the name of the decedent, the nature of the demandant's interest in the estate and the demandant's address or that of the demandant's attorney. The register shall mail a copy of the demand to the personal representative, if one has been appointed. After filing of a demand, an order or filing to which the demand relates may not be made or accepted without notice as prescribed in section 1-401 to the demandant or the demandant's attorney. The validity of an order that is issued or filing that is accepted without compliance with this requirement is not affected by the error, but the petitioner receiving the order or the person making the filing is liable for any damage caused by the absence of notice. The requirement of notice arising from demand under this provision may be waived in writing by the demandant and ceases upon the termination of the demandant's interest in the estate.

PART 3

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

§3-301. Informal probate or appointment proceedings; application; contents

1. Applications for informal probate or appointment proceedings. Applications for informal probate or informal appointment must be directed to the register and be verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the following information and such other information and in such form as the Supreme Judicial Court may by rule provide:

A. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, must contain the following:

(1) A statement of the interest of the applicant;

(2) The name and date of death of the decedent, the decedent's age and the county and state of the decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) If the decedent was not domiciled in the State at the time of death, a statement showing venue;

(4) A statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated;

(5) A statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere; and

(6) A statement that the time limit for informal probate or appointment as provided in this Article has not expired either because 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, circumstances as described by section 3-108 have occurred authorizing tardy probate or appointment;

B. An application for informal probate of a will must state the following in addition to the statements required by paragraph A:

(1) That the original of the decedent's last will is in the possession of the court or accompanies the application or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(2) That the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed; and

(3) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument that is the subject of the application is the decedent's last will;

C. An application for informal appointment of a personal representative to administer an estate under a will must describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment must adopt the statements in the application or petition for probate and state the name, address and priority for ap-

pointment of the person whose appointment is sought;

D. An application for informal appointment of an administrator in intestacy must state in addition to the statements required by paragraph A:

(1) That after the exercise of reasonable diligence the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under section 1-301 or a statement why any such instrument of which the applicant may be aware is not being probated; and

(2) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 3-203;

E. An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status must refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted and describe the priority of the applicant; and

F. An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 3-610, subsection 3 or whose appointment has been terminated by death or removal must adopt the statements in the application or petition that led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor and describe the priority of the applicant.

2. Personal jurisdiction over applicant. By verifying an application for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the applicant.

§3-302. Informal probate; duty of register; effect of informal probate

Upon receipt of an application requesting informal probate of a will, the register upon making the findings required by section 3-303 shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure that leads to informal probate of a will renders the probate void.

§3-303. Informal probate; proof and findings required

1. Informal probate; proof and findings required. In an informal proceeding for original probate of a will, the register shall determine whether:

- A. The application is complete;
- B. The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;
- C. The applicant appears from the application to be an interested person as defined in section 1-201, subsection 26;
- D. On the basis of the statements in the application, venue is proper;
- E. An original, duly executed and apparently unrevoked will is in the register's possession;
- F. Any notice required by section 3-204 has been given and the application is not required to be declined under section 3-304; and
- G. It appears from the application that the time limit for original probate has not expired.

2. Denial. The application must be denied if it indicates that a personal representative has been appointed in another county of this State or, except as provided in subsection 4, if it appears that this or another will of the decedent has been the subject of a previous probate order.

3. Executed will. A will that appears to have the required signatures and that contains an attestation clause showing that requirements of execution under section 2-502 or 2-505 have been met must be probated without further proof. In other cases, the register may assume execution if the will appears to have been properly executed or the register may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

4. Will previously probated elsewhere. Informal probate of a will that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office of court where it was first probated.

5. Will from another jurisdiction. A will from a place that does not require probate of a will after death and that is not eligible for probate under subsection 1 may be probated in this State upon receipt by the register of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of that place.

§3-304. Informal probate; unavailable in certain cases

Applications for informal probate that relate to one or more of a known series of testamentary instruments, the latest of which does not expressly revoke the earlier, other than a will and one or more codicils thereto, must be declined.

§3-305. Informal probate; register not satisfied

If the register is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 3-303 and 3-304 or any other reason, the register may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

§3-306. Informal probate; notice requirements

The moving party shall give notice as described by section 1-401 of the moving party's application for informal probate to any person demanding notice pursuant to section 3-204 and to any personal representative of the decedent whose appointment has not been terminated. If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services. Except as provided in section 3-705, no other notice of informal probate is required.

§3-307. Informal appointment proceedings; delay in order; duty of register; effect of appointment

1. Duty to appoint; delay in order. Upon receipt of an application for informal appointment of a personal representative, other than a special administrator as provided in section 3-614, if at least 120 hours have elapsed since the decedent's death, the register, after making the findings required by section 3-308, shall appoint the applicant subject to qualification and acceptance. If the decedent was a nonresident, the register shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that the decedent's estate be subject to the laws of this State.

2. Effect of appointment. The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative it creates, is subject to termination as provided in sections 3-608 to 3-612 but is not subject to retroactive vacation.

§3-308. Informal appointment proceedings; proof and findings required

1. Informal appointment proceedings; proof and findings required. In informal appointment proceedings, the register shall determine whether:

A. The application for informal appointment of a personal representative is complete;

B. The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

C. The applicant appears from the application to be an interested person as defined in section 1-201, subsection 26;

D. On the basis of the statements in the application, venue is proper;

E. Any will to which the requested appointment relates has been formally or informally probated, but this requirement does not apply to the appointment of a special administrator;

F. Any notice required by section 3-204 has been given; and

G. From the statements in the application, the person whose appointment is sought has priority entitling the applicant to the appointment.

2. Denial. Unless section 3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 3-610, subsection 3 has been appointed in this or another county of this State; that, unless the applicant is the domiciliary personal representative or the nominee, the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile; or that other requirements of this section have not been met.

§3-309. Informal appointment proceedings; register not satisfied

If the register is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 3-307 and 3-308, or for any other reason, the register may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

§3-310. Informal appointment proceedings; notice requirements

The moving party shall give notice as described by section 1-401 of the moving party's intention to seek an appointment informally to any person demanding notice pursuant to section 3-204 and to any

person having a prior or equal right to appointment not waived in writing and filed with the court. If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services. No other notice of an informal appointment proceeding is required.

§3-311. Informal appointment unavailable in certain cases

If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument that may relate to property subject to the laws of this State and that is not filed for probate in the court, the register must decline the application.

PART 4**FORMAL TESTACY AND APPOINTMENT PROCEEDINGS****§3-401. Formal testacy proceedings; nature; when commenced**

A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 3-402, subsection 1 in which the petitioner requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will that is the subject of a pending application, or a petition in accordance with section 3-402, subsection 2 for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the register may not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from making any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of the office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed

personal representative other than those relating to distribution.

§3-402. Formal testacy or appointment proceedings; petition; contents

1. Petition for formal probate of a will; contents. Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, contain further statements as indicated in this section and contain such other information and be in such form as the Supreme Judicial Court may by rule provide. A petition for formal probate of a will must:

A. Request an order as to the testacy of the decedent in relation to a particular instrument that may or may not have been informally probated and determining the heirs;

B. Contain the statements required for informal applications as stated in section 3-301, subsection 1, paragraph A, subparagraphs (1) to (4) and the statements required by section 3-301, subsection 1, paragraph B, subparagraphs (2) and (3); and

C. State whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable.

2. Relief requested. A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by section 3-301, subsection 1, paragraphs A and D, indicate whether supervised administration is sought and contain such other information and be in such form as the Supreme Judicial Court may by rule provide. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by section 3-301, subsection 1, paragraph D, subparagraph (2) may be omitted.

§3-403. Formal testacy proceeding; notice of hearing on petition

1. Notice of hearing on petition for formal probate of a will. Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by section 1-401 by the petitioner to the persons enumerated in this subsection and to any addi-

tional person who has filed a demand for notice under section 3-204.

Notice must be given to the following persons: the surviving spouse, children and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated or offered for informal or formal probate in the county or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere and any personal representative of the decedent whose appointment has not been terminated. If the decedent was 55 years of age or older, the petitioner shall give notice as described in section 1-401 to the Department of Health and Human Services. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

2. Additional notice when death in doubt. If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition must be sent by registered mail to the alleged decedent at the alleged decedent's last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any of the following methods:

A. By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

B. By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent; and

C. By engaging the services of an investigator. The costs of any search directed by the court must be paid by the petitioner if there is no administration or by the estate of the decedent if there is administration.

§3-404. Formal testacy proceedings; written objections to probate

Any party to a formal proceeding who opposes the probate of a will for any reason shall state in that party's pleadings that party's objections to probate of the will.

§3-405. Formal testacy proceedings; uncontested cases; hearings and proof

If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 3-409 have been met or conduct a hearing in open court and require proof of the matters necessary

to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

§3-406. Formal testacy proceedings; contested cases

In a contested case in which the proper execution of a will is at issue:

1. Self-proved will; witness not required. If the will is self-proved pursuant to section 2-503, the will satisfies the requirements for execution without the testimony of any attesting witness upon the filing of the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit; or

2. Will not notarized; attesting witness required. If the will is witnessed pursuant to section 2-502, subsection 1, paragraph C but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this State, competent and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

§3-407. Formal testacy proceedings; burdens in contested cases

In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it must be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it must be determined first whether the will is entitled to probate.

§3-408. Formal testacy proceedings; will construction; effect of final order in another jurisdiction

A final order of a court of another state determining testacy or the validity or construction of a will made in a proceeding involving notice to and an opportunity for contest by all interested persons must be

accepted as determinative by the courts of this State if it includes or is based upon a finding that the decedent at death was domiciled in the state where the order was made.

§3-409. Formal testacy proceedings; order; foreign will

After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 3-108, the court shall determine the decedent's domicile at death, heirs and state of testacy. Any will found to be valid and unrevoked must be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 3-612. The petition must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a foreign jurisdiction, including a place that does not provide for probate of a will after death, may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

§3-410. Formal testacy proceedings; probate of more than one instrument

If 2 or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions that work a total revocation by implication. If more than one instrument is probated, the order must indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 3-412.

§3-411. Formal testacy proceedings; partial intestacy

If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

§3-412. Formal testacy proceedings; effect of order; vacation

Subject to appeal and subject to vacation as provided in this section and in section 3-413, a formal testacy order under sections 3-409 to 3-411, including

an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

1. Petition to modify or vacate formal testacy order. The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will:

A. Were unaware of its existence at the time of the earlier proceeding; or

B. Were unaware of the earlier proceeding and were given no notice thereof, except by publication;

2. Reconsideration of order determining heirs. If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of the decedent's death or were given no notice of any proceeding concerning the decedent's estate, except by publication;

3. Time limits. A petition for vacation under either subsection 1 or 2 must be filed prior to the earlier of the following time limits:

A. If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement;

B. Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent; or

C. Twelve months after the entry of the order sought to be vacated;

4. Modification or vacation order. The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs; and

5. Effect of finding of fact of death. The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at the decedent's last known address and the court finds that a search under section 3-403, subsection 2 was made.

If the alleged decedent is not dead, even if notice was sent and search was made, the alleged decedent may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

§3-413. Formal testacy proceedings; vacation of order for other cause

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

§3-414. Formal proceedings concerning appointment of personal representative

1. Formal proceeding for appointment of personal representative. A formal proceeding for adjudication regarding the priority or qualification of a person who is an applicant for appointment as personal representative, or of a person who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 3-402 as well as by this section. In other cases, the petition must contain or adopt the statements required by section 3-301, subsection 1, paragraph A and describe the question relating to priority or qualification of the personal representative that is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

2. Notice and decision. After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 3-611.

PART 5**SUPERVISED ADMINISTRATION****§3-501. Supervised administration; nature of proceeding**

Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court that extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this Part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

§3-502. Supervised administration; petition; order

A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration must include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons:

1. Will directing supervised administration. If the decedent's will directs supervised administration, the court must order supervised administration of the decedent's estate unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

2. Will directing unsupervised administration. If the decedent's will directs unsupervised administration, the court may order supervised administration of the decedent's estate only upon a finding that it is necessary for protection of persons interested in the estate; or

3. Other cases. In other cases when the court finds that supervised administration is necessary under

the circumstances, the court must order supervised administration of the decedent's estate.

§3-503. Supervised administration; effect on other proceedings

1. Effect on application for informal proceedings. The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

2. Effect on will probated in informal proceedings. If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 3-401.

3. Effect on personal representative. After receiving notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously may not exercise the power to distribute any estate. The filing of the petition does not affect the personal representative's other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

§3-504. Supervised administration; powers of personal representative

Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this Code, but the personal representative may not exercise the power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative that is ordered by the court must be endorsed on the personal representative's letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

§3-505. Supervised administration; interim orders; distribution and closing orders

Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

PART 6**PERSONAL REPRESENTATIVE:
APPOINTMENT, CONTROL AND
TERMINATION OF AUTHORITY****§3-601. Qualification**

Prior to receiving letters, a personal representative must qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

§3-602. Acceptance of appointment; consent to jurisdiction

By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding must be delivered to the personal representative, or mailed to the personal representative by ordinary first class mail at the address listed in the application or petition for appointment or as thereafter reported to the court and to the personal representative's address as then known to the petitioner.

§3-603. Bond not required without court order; exceptions

Bond is not required of a personal representative appointed in informal proceedings, except upon the appointment of a special administrator, when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or when bond is required under section 3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable, or as provided in section 3-619, subsection 7. Bond required by any will or under this section may be dispensed with in formal proceedings upon determination by the court that it is not necessary. Bond is not required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this State to secure performance of the personal representative's duties.

§3-604. Bond amount; security; procedure; reduction

If bond is required and the provisions of the will or order do not specify the amount, unless stated in the application or petition, the person qualifying shall file a statement under oath with the register indicating that person's best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and that person shall execute and file a bond with the register, or give other suitable security, in an amount not

less than the estimate. The register shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The register may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in section 6-201, subsection 4, in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties or permit the substitution of another bond with the same or different sureties.

§3-605. Demand for bond by interested person

Any person apparently having an interest in the estate worth in excess of \$5,000, or any creditor having a claim in excess of \$5,000, may make a written demand that a personal representative give bond. The demand must be filed with the register and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in section 3-603 or 3-604. After the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the personal representative's office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for the personal representative's removal and appointment of a successor personal representative.

§3-606. Terms and conditions of bonds

1. Required terms and conditions. The following requirements and provisions apply to any bond required by this Part.

A. Bonds must name the State of Maine as obligee for the benefit of the persons interested in the estate and must be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

B. Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties must be stated in the bond.

C. By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court that issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any pro-

ceeding must be delivered to the surety or mailed to the surety by registered or certified mail at the surety's address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner.

D. On petition of a successor personal representative, any other personal representative of the same decedent or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

E. The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

2. Limitation on action against surety. An action or proceeding may not be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

§3-607. Order restraining personal representative

1. Order. On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of the personal representative's office, or make any other order to secure proper performance of the personal representative's duty, if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

2. Hearing. The matter under subsection 1 must be set for hearing as soon as practicable unless the parties otherwise agree. Notice as the court directs must be given to the personal representative and the personal representative's attorney of record, if any, and to any other parties named as defendants in the petition.

§3-608. Termination of appointment; general

Termination of appointment of a personal representative occurs as indicated in sections 3-609 to 3-612. Termination ends the right and power pertaining to the office of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the personal representative of the duty to preserve assets subject to the personal representa-

tive's control and to account for and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates the personal representative's authority to represent the estate in any pending or future proceeding.

§3-609. Termination of appointment; death or disability

The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates the personal representative's appointment. Until appointment and qualification of a successor or special personal representative to replace the deceased or protected personal representative, the personal representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by the personal representative's decedent or ward at the time the personal representative's appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon the successor personal representative's appointment and qualification.

§3-610. Termination of appointment; voluntary

1. One year after closing of estate by sworn statement. An appointment of a personal representative terminates as provided in section 3-1003, one year after the filing of a closing statement.

2. Upon court order closing an estate. An order closing an estate as provided in section 3-1001 or 3-1002 terminates an appointment of a personal representative.

3. Resignation; effect. A personal representative may resign by filing a written statement of resignation with the register after the personal representative has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to the successor representative.

§3-611. Termination of appointment by removal; cause; procedure

1. Petition for removal of personal representative. A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice must be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in section 3-607, after receipt of notice of removal proceedings, the personal

representative may not act except to account, to correct maladministration or to preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

2. Grounds for removal. Cause for removal exists when removal would be in the best interests of the estate or if it is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the appointment or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the office, has mismanaged the estate or has failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment as ancillary personal representative or the appointment of a nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this State to administer local assets.

§3-612. Termination of appointment; change of testacy status

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will that is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative under the will, does not terminate the appointment of the personal representative although the personal representative's powers may be reduced as provided in section 3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

§3-613. Successor personal representative

Parts 3 and 4 of this Article govern proceedings for appointment of a personal representative to succeed a personal representative whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim that was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any

position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration that the former personal representative would have had if the appointment had not been terminated.

§3-614. Special administrator; appointment

A special administrator may be appointed:

1. Informal proceedings. Informally by the register on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 3-609; and

2. Formal proceedings. In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

§3-615. Special administrator; who may be appointed

1. Named executor, if available. If a special administrator is to be appointed pending the probate of a will that is the subject of a pending application or petition for probate, the person named executor in the will must be appointed if available and qualified.

2. Any proper person. In cases other than those set out in subsection 1, any proper person may be appointed special administrator.

§3-616. Special administrator; appointed informally; powers and duties

A special administrator appointed by the register in informal proceedings pursuant to section 3-614, subsection 1 has the duty to collect and manage the assets of the estate, to preserve them, to account for them and to deliver them to the general personal representative upon the general personal representative's qualification. The special administrator has the power of a personal representative under the Code necessary to perform the special administrator's duties.

§3-617. Special administrator; formal proceedings; power and duties

A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform

particular acts or on other terms as the court may direct.

§3-618. Termination of appointment; special administrator

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 to 3-611.

§3-619. Public administrators

1. Public administrators; appointment; powers and duties. 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 has the same powers and duties of a personal representative under supervised administration as provided in section 3-504 and, except as provided in subsection 7, shall give bond as provided for other personal representatives in cases of ordinary administration under sections 3-603 to 3-606. If any person entitled to appointment as personal representative under section 3-203, prior to the appointment of the public administrator, files 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.

2. Compensation. The public administrator may be allowed fees and compensation for the public administrator's services as in the case of ordinary administration as provided in sections 3-719 to 3-721, except that no fee for the public administrator's own services may be paid without prior approval by the court.

3. Authority pending appointment. 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.

4. Termination. If before the estate of a decedent 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 the public administrator shall account for and deliver the assets of the estate to the private personal representative or to the successors under the will as provided by law if no private personal representative has been appointed.

5. Decedent's assets disposed of as unclaimed property. When there are assets other than real property remaining in the hands of the 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 court to deposit the assets with the Treasurer of State, who shall receive the assets 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 court orders the public administrator to deposit them with the Treasurer of State.

6. Notice to treasurer; annual audit. 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, and in all cases in which the public administrator is ordered to pay the balance of the estate as provided in subsection 5 the court 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 court 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 of the money. The records and accounts of the public administrator must be audited annually by the Office of the State Auditor.

7. Exemption from notice and bond requirements. Estates administered under this section having a value at the decedent's death not exceeding \$5,000 are exempt from all notice and filing costs and from giving bond. The cost of notice must be paid by the court.

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 appointment. The powers of a personal representative relate back in time to give acts by the person appointed that are beneficial to the estate occurring prior to appointment the same effect as those occurring after appointment. Subject to the priorities of Title 22, section 2843-A, prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to the decedent's 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 first issued has exclusive authority under the letters until that person's appointment is terminated or modified. If through error general letters are later 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

1. General duties. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. 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. The personal representative shall use the authority conferred upon the personal representative by this Code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described in Title 18-B, sections 802, 803, 805, 806 and 807 and Title 18-B, chapter 9, except as follows.

A. A personal representative, in developing an investment strategy, shall take into account the expected duration of the period reasonably required to effect distribution of the estate's assets.

B. Except as provided in section 3-906, subsection 1, paragraphs A and B, a personal representative may make distribution of an estate's assets in cash or in kind, in accordance with the devisees' best interests, and is not required either to liquidate the estate's assets or to preserve them for distribution.

C. If all devisees whose devises are to be funded from the residue of an estate agree, in a written instrument signed by each of them and presented to the personal representative, on an investment manager to direct the investment of the estate's residuary assets, the personal representative may, but need not, rely on the investment advice of the investment manager so identified or delegate the investment management of the estate's residuary assets to the investment manager and, in either case, may pay reasonable compensation to the investment manager from the residue of the estate. A personal representative who relies on the advice of, or delegates management discretion to, an investment manager in accordance with the terms of this section is not liable for the investment per-

formance of the assets invested in the discretion of, or in accordance with the advice of, the investment manager.

2. Authority. A personal representative may 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 the personal representative's appointment or fitness to continue or a supervised administration proceeding. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this Code.

3. Standing to sue. Except as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at the decedent's death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as the 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 the personal representative 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 appointment every personal representative, except any special administrator, shall give information of the 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. The information must 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 must include a statement that the estate is being administered by the personal representative under the Code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration. The information must 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 duty to the persons concerned but does not affect the validity of the personal representative's appointment, powers or other duties. A personal representative may inform other persons of the personal representative's appointment by delivery or ordinary first class mail.

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

1. Duty to file or mail inventory. Within 3 months after appointment, a personal representative who is not a special administrator or a successor to another personal representative who has previously discharged this duty shall prepare and file with the court or mail to all interested persons an inventory of property owned by the decedent at the time of 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 must 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.

2. Inventory furnished on request. If the personal representative filed the inventory with the court pursuant to subsection 1, the personal representative shall furnish the inventory to interested persons who request it. If the personal representative mailed the inventory to all interested persons who requested it pursuant to subsection 1, the personal representative may also file the inventory with the court.

3. Failure to file, mail or furnish inventory; missing property. When an inventory has not been filed, mailed or furnished as required under subsection 1 or 2 and an interested party makes a prima facie case that property that should have been inventoried is now missing, the personal representative has the burden of proving by a preponderance of the evidence that the

specific property would properly be excluded from the inventory.

§3-707. Employment of appraisers

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

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

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file the supplementary inventory or appraisal with the court or mail or furnish copies of the supplementary inventory or appraisal or information about the supplementary inventory or appraisal to persons interested in the new information.

§3-709. Duty of personal representative; possession of estate

Except as otherwise provided by a decedent's will, every personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled to it until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence in any action against the heir or devisee for possession of the property that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection and preservation of the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of property or to determine the title of the property.

§3-710. Power to avoid transfers

The property liable for the payment of unsecured debts of a decedent includes all property transferred by

the decedent by any means that is in law void or voidable as against the decedent's creditors, and, subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative. The personal representative is not required to institute such an action unless requested by creditors, who must pay or secure the cost and expenses of litigation.

§3-711. Powers of personal representatives; in general

Until termination of the personal representative's appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing or order of court, except as limited by this section. The personal representative may not sell or transfer any interest in real property of the estate without giving notice at least 10 days prior to that sale or transfer to any person succeeding to an interest in that property, unless the personal representative is authorized under the will to sell or transfer real estate without this notice.

§3-712. Improper exercise of power; breach of fiduciary duty

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of the personal representative's fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative must be determined as provided in sections 3-713 and 3-714.

§3-713. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions

Any sale or encumbrance to the personal representative, the personal representative's spouse, agent or attorney, or any corporation or trust in which the personal representative has a substantial beneficial interest, or any transaction that is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except a person who has consented after fair disclosure, unless:

- 1. Express authorization by decedent.** The will or a contract entered into by the decedent expressly authorized the transaction; or
- 2. Court approval.** The transaction is approved by the court after notice to interested persons.

§3-714. Persons dealing with personal representative; protection

A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative's power was properly exercised. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives that are endorsed on letters as provided in section 3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection in this section extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection in this section is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

§3-715. Transactions authorized for personal representatives; exceptions

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

- 1. Retain assets pending distribution.** Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or that are otherwise improper for trust investment;
- 2. Receive assets.** Receive assets from fiduciaries, or other sources;
- 3. Perform decedent's contracts.** Perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:
 - A.** Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land;
or
 - B.** Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the

escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

4. Satisfy charitable pledges. Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

5. Invest liquid assets. If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments that would be reasonable for use by trustees generally;

6. Acquire, sell, manage or abandon assets. Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of or abandon an estate asset;

7. Make repairs or alterations. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements and raze existing or erect new party walls or buildings;

8. Manage real estate. Subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

9. Enter leases. Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

10. Enter mineral leases. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

11. Abandon property. Abandon property when, in the opinion of the personal representative, it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

12. Vote securities. Vote stocks or other securities in person or by general or limited proxy;

13. Pay sums chargeable against securities. Pay calls, assessments and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

14. Hold security through nominee. Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the per-

sonal representative is liable for any act of the nominee in connection with the security;

15. Obtain insurance. Insure the assets of the estate against damage, loss and liability and the personal representative against liability as to 3rd persons;

16. Borrow or advance money. Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

17. Compromise claims. Effect a fair and reasonable compromise with any debtor or obligor or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner in satisfaction of the indebtedness secured by lien;

18. Pay expenses. Pay taxes, assessments, compensation of the personal representative and other expenses incident to the administration of the estate;

19. Exercise stock rights. Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

20. Allocate income and expenses. Allocate items of income or expense to either estate income or principal, as permitted or provided by law;

21. Employ and act through agents. Employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

22. Prosecute or defend claims. Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties;

23. Alienate property. Sell, mortgage or lease any real or personal property of the estate or any interest in the property for cash or credit or for part cash and part credit, with or without security for unpaid balances;

24. Continue any business. Continue any unincorporated business or venture in which the decedent was engaged at the time of death;

A. In the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continua-

tion is a reasonable means of preserving the value of the business including good will;

B. In the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

C. Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

25. Incorporate any business. Incorporate any business or venture in which the decedent was engaged at the time of death;

26. Contract without personal liability. Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

27. Distribute the estate. Satisfy and settle claims and distribute the estate as provided in this Code; and

28. Environmental compliance. Exercise any power described in section 1-110 relating to compliance with environmental laws.

§3-716. Powers and duties of successor personal representative

A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but the successor personal representative may not exercise any power expressly made personal to the executor named in the will.

§3-717. Corepresentatives; when joint action required

If 2 or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with that corepresentative or if advised by the personal representative with whom they deal that the personal representative has authority to act alone for any of the reasons mentioned in this section are as fully protected as if the person with whom they dealt had been the sole personal representative.

§3-718. Powers of surviving personal representative

Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of 2 or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

§3-719. Compensation of personal representative

A personal representative is entitled to reasonable compensation for the personal representative's services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce the personal representative's right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

§3-720. Expenses in estate litigation

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative or nominee is entitled to receive from the estate necessary expenses and disbursements including reasonable attorney's fees incurred.

§3-721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate

1. Procedure. After notice to all interested persons, on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed or the reasonableness of the compensation determined by the personal representative for the personal representative's own services may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

2. Reasonable fee factors. Factors to be considered as guides in determining the reasonableness of a fee include the following:

A. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the service properly;

B. The likelihood, if apparent to the personal representative, that the acceptance of the particular

employment will preclude the person employed from other employment;

C. The fee customarily charged in the locality for similar services;

D. The amount involved and the results obtained;

E. The time limitations imposed by the personal representative or by the circumstances; and

F. The experience, reputation and ability of the person performing the services.

PART 8

CREDITORS' CLAIMS

§3-801. Notice to creditors

1. Notice by publication. Unless notice has already been given under this section, a personal representative upon appointment shall publish a notice to creditors announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred. The notice to creditors must be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the court that appointed the personal representative is located.

2. Notice by mail. A personal representative may give written notice by mail or other delivery to a creditor, notifying the creditor to present the creditor's claim within 4 months after the published notice, if given as provided in subsection 1, or within 60 days after the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection 1 or a similar notice.

3. No liability for failure to give notice. The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.

§3-802. Statutes of limitations

1. Applicability of statutes of limitations; waiver. Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim barred by a statute of limitations at the time of the decedent's death may be allowed or paid.

2. Suspension for 4 months after death. The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended for 4 months after the decedent's death, but resumes thereafter as to claims not barred by other laws.

3. Commencement of action by presentation of claim. For purposes of any statute of limitations, the presentation of a claim pursuant to section 3-804 is equivalent to commencement of a proceeding on the claim.

§3-803. Limitations on presentation of claims

1. Claims arising before death. All claims against a decedent's estate that arose before the death of the decedent, including claims of the State and any subdivision of the State, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, if not barred earlier by another statute of limitations or non-claim statute, are barred against the estate, the personal representative and the heirs and devisees and nonprobate transferees of the decedent, unless presented within the earlier of the following:

A. Nine months after the decedent's death; or

B. The time provided by section 3-801, subsection 2 for creditors who are given actual notice, and the time provided in section 3-801, subsection 1 for all creditors barred by publication.

2. Claim barred by nonclaim statute. A claim described in subsection 1 that is barred by the non-claim statute of the decedent's domicile before the giving of notice to creditors in this State is barred in this State.

3. Claims arising after death. All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the State and any subdivision of the State, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, are barred against the estate, the personal representative and the heirs and devisees of the decedent, unless presented as follows:

A. A claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due; or

B. Any other claim, within the later of 4 months after it arises or the time specified in subsection 1, paragraph A.

4. Exceptions. Nothing in this section affects or prevents:

A. Any proceeding to enforce any mortgage, pledge or other lien upon property of the estate;

B. To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or the personal representative is protected by liability insurance;

C. Collection of compensation for services rendered and reimbursement for expenses advanced

by the personal representative or by the attorney or accountant for the personal representative of the estate; or

D. The State from filing and enforcing a claim for Medicaid reimbursement under Title 22, section 14. Notwithstanding subsection 1, paragraph A, if this claim is filed within 4 months of published or actual notice of creditors, the claim is considered timely filed.

§3-804. Manner of presentation of claims

Claims against a decedent's estate may be presented as described in this section.

1. Written statement of claim. The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the register. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated. If the claim is secured, the security must be described. Failure to describe correctly the security, the nature of any uncertainty and the due date of a claim not yet due does not invalidate the presentation made.

2. Proceeding on claim. The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction to obtain payment of the claimant's claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent that were pending at the time of death.

3. Time limit for proceeding after disallowance. If a claim is presented under subsection 1, no proceeding on the claim may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim that is not presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period or, to avoid injustice, the court on petition may order an extension of the 60-day period, but in no event may the extension run beyond the applicable statute of limitations.

4. Presenting claims before administration. When a decedent's estate has not been commenced at the time a claimant wishes to present a claim, a claim is deemed presented when the claimant files with the register a written statement of claim meeting the requirements of subsection 1 and a demand for notice pursuant to section 3-204. The provisions of subsec-

tion 3 apply upon the appointment of a personal representative.

§3-805. Classification of claims

1. Priority of claims. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

A. Costs and expenses of administration;

B. Reasonable funeral expenses;

C. Debts and taxes with preference under federal law;

D. Medicaid benefits recoverable under Title 22, section 14, subsection 2-I and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

E. Debts and taxes with preference under other laws of this State; and

F. All other claims.

2. No priority within class or for claims not due. Preference may not be given in the payment of any claim over any other claim of the same class, and a claim due and payable is not entitled to a preference over claims not due.

§3-806. Allowance of claims

1. Allowance or disallowance by personal representative. As to claims presented in the manner described in section 3-804 within the time limit prescribed in section 3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim that is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on the claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

2. Change of claim status by personal representative. After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this subsection. The per-

sonal representative may prior to payment change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection 1. The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection 1; after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

3. Allowance by court. Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the register in due time and not barred by subsection 1. Notice in this proceeding must be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

4. Judgment of another court; effect. A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

5. Interest. Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear prejudgment interest at the rate specified in Title 14, section 1602-B for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

A. Interest may not accrue on any allowed claims, however allowed, against an insolvent estate, except to the extent that insurance coverage or other nonprobate assets are available to pay the claim in full.

B. To the extent that an allowed claim against an insolvent estate is secured by property, the value of which, as determined under section 3-809, is greater than the amount of the claim, the holder of the claim may receive interest on the principal amount of the claim and any reasonable fees, costs or charges provided for under an agreement under which the claim arose.

§3-807. Payment of claims

1. Payment upon expiration of limitations period. Upon the expiration of the earlier of the time limitations provided in section 3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims

already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available to pay it.

2. Earlier payment; liability of personal representative. The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but the personal representative is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:

A. Payment was made before the expiration of the time limit stated in subsection 1 and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

B. Payment was made, due to the negligence or willful fault of the personal representative, in a manner that deprives the injured claimant of priority.

§3-808. Individual liability of personal representative

1. Contractual liability. Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the personal representative fails to reveal the representative capacity and identify the estate in the contract.

2. Liability for ownership or control of property; torts. A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if the personal representative is personally at fault.

3. Proceedings against personal representative in fiduciary capacity. Claims based on contracts entered into by a personal representative in a fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in a fiduciary capacity, whether or not the personal representative is individually liable.

4. Allocating liability between estate and personal representative. Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting,

surcharge or indemnification or other appropriate proceeding.

§3-809. Secured claims

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders the creditor's security; otherwise payment is upon the basis of one of the following:

1. Security exhausted. If the creditor exhausts the creditor's security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

2. Security not exhausted. If the creditor does not have the right to exhaust the creditor's security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

§3-810. Claims not due and contingent or unliquidated claims

1. Claim due or certain before distribution. If a claim that will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

2. Other cases. In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

A. If the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account; or

B. Arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee or otherwise.

§3-811. Counterclaims

In allowing a claim the personal representative may deduct any counterclaim that the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

§3-812. Execution and levies prohibited

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section may not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

§3-813. Compromise of claims

When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

§3-814. Encumbered assets

If any assets of the estate are encumbered by mortgage, pledge, lien or other security interest, the personal representative may pay the encumbrance or any part of the encumbrance, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of the lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

§3-815. Administration in more than one state; duty of personal representative

1. Estate assets subject to all claims, allowances and charges. All assets of estates being administered in this State are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

2. Estate insufficient; claimants to receive equal proportion of claims. If the estate either in this State or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this State or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of the claimant's claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this State, the creditor so benefited is to receive dividends from local assets only upon the balance of the creditor's claim after deducting the amount of the benefit.

3. Local assets apply first to claims allowed in this State. In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this State is not the state of the decedent's last domicile, the claims al-

lowed in this State must be paid their proportion if local assets are adequate for the purpose, and the balance of local assets must be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this State the amount to which they are entitled, local assets must be marshalled so that each claim allowed in this State is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this State from assets in other jurisdictions.

§3-816. Final distribution to domiciliary representative

The estate of a nonresident decedent being administered by a personal representative appointed in this State must, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

1. **Maine law governs.** By virtue of the decedent's will, if any, and applicable choice of law provisions, the successors are identified pursuant to the law of this State without reference to the law of the decedent's domicile;

2. **No domiciliary personal representative exists.** The personal representative of this State, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

3. **Court order.** The court orders otherwise in a proceeding for a closing order under section 3-1001 or incident to the closing of a supervised administration.

In other cases, distribution of the estate of a decedent must be made in accordance with the other Parts of this Article.

§3-817. Survival of actions

1. **Survival of actions.** No personal action or cause of action is lost by the death of either party, but the same survives for and against the personal representative of the deceased, except that actions or causes of action for the recovery of penalties and fines under criminal statutes do not survive the death of the defendant. A personal representative may seek relief from a judgment in an action to which the deceased was a party to the same extent that the deceased might have done so.

2. **Death of plaintiff or defendant.** When the only plaintiff or defendant dies while an action that survives is pending, or after its commencement and before entry of judgment, the decedent's personal representative may appear and enter the action or any appeal that has been made, and suggest on the record the death of the party. If the personal representative does not appear within 90 days after the appointment, the personal representative may be cited to appear, and after due notice judgment may be entered against the

personal representative by dismissal or default if no such appearance is made.

3. **Death of one of several plaintiffs or one of several defendants.** When either of several plaintiffs or defendants in an action that survives dies, the death may be suggested on the record, and the personal representative of the deceased may appear or be cited to appear as provided in subsection 2. The action may be further prosecuted or defended by the survivors and the personal representative jointly or by either of them. The survivors, if any, on both sides of the action may testify as witnesses.

4. **Death of judgment creditor.** When a judgment creditor dies before the first execution issues or before an execution issued in the judgment creditor's lifetime is fully satisfied, the execution may be issued or be effective in favor of the deceased judgment creditor's personal representative, but an execution may not be issued or be effective beyond the time within which it would have been effective or issued if the party had not died.

5. **Execution in favor of deceased judgment creditor.** An execution issued under subsection 4 must set forth the fact that the judgment creditor has died since the rendition of the judgment and that the substituted party is the personal representative of the decedent's estate.

6. **Liability of personal representative.** The personal representative proceeding under this section is liable, and shall hold any recovered property or award, in a representative capacity, except as otherwise provided in section 3-808.

§3-818. Damages limited to actual damages

In any tort action against the personal representative of a decedent's estate, in the personal representative's representative capacity, the plaintiff may recover only the value of the goods taken or damage actually sustained.

PART 9

SPECIAL PROVISIONS RELATING TO DISTRIBUTION

§3-901. Successors' rights if no administration

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title by proof of the decedent's ownership and death and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and sub-

ject to the rights of others resulting from abatement, retainer, advancement and ademption.

§3-902. Distribution; order in which assets appropriated; abatement

1. Order in which assets appropriated; abatement. Except as provided in subsection 2 and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: property not disposed of by the will, residuary devises, general devises and specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

2. Intention of the testator controls. If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection 1, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

3. Adjustments. If the subject of a preferred devise is sold or used incident to administration, abatement must be achieved by appropriate adjustments in or contribution from other interests in the remaining assets.

§3-903. Right of retainer

The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, must be offset against the successor's interest, but the successor has the benefit of any defense that would be available to the debtor in a direct proceeding for recovery of the debt. The debt constitutes a lien on the successor's interest in favor of the estate, having priority over any attachment or transfer of the interest by the successor.

§3-904. Interest on general pecuniary devise

General pecuniary devises bear interest at the legal rate of 5% per year beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated in the will.

§3-905. Penalty clause for contest

A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforce-

able if probable cause exists for instituting proceedings.

§3-906. Distribution in kind; valuation; method

1. Distribution in kind; valuation; distribution of residuary estate. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate must be distributed in kind to the extent possible through application of the following provisions.

A. A specific devisee is entitled to distribution of the thing devised to that devisee, and a spouse or child who has selected particular assets of an estate as provided in section 2-403 must receive the items selected.

B. Any homestead or family allowance or devise of a stated sum of money may be satisfied by value in kind, in the personal representative's discretion, as long as:

(1) The person entitled to the payment has not demanded payment in cash;

(2) The property distributed in kind is valued at fair market value as of the date of its distribution; and

(3) No residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate or, if a residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate, there are insufficient other assets to which no residuary devisee has made such a request to permit satisfaction of the estate's obligations and funding of all pecuniary devises made under the decedent's will.

C. For the purpose of valuation under paragraph B, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets that do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

D. The residuary estate may be distributed by the personal representative in cash or in kind, in accordance with the best interests of the residuary devisees. Residuary assets may be distributed, at the personal representative's discretion, in pro rata or non pro rata shares, except that residuary assets not distributed pro rata must be valued as of the date on which they are distributed.

2. Right of distributee to object. After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

§3-907. Distribution in kind; evidence

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

§3-908. Distribution; right or title of distributee

Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

§3-909. Improper distribution; liability of distributee

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if the distributee or claimant has the property. If the distributee or claimant does not have the property, then the distributee or claimant is liable to return the value as of the date of disposition of the property improperly received and income and gain received by the distributee or claimant.

§3-910. Purchasers from distributees protected

If property distributed in kind or a security interest in the property is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is acquired by a purchaser from or lender to a transferee from a distributee, the purchaser

or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to the personal representative, as well as a purchaser from or lender to any other distributee or transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which the register of deeds notes by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer was made for value.

§3-911. Partition for purpose of distribution

When 2 or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property that cannot be partitioned without prejudice to the owners and that cannot conveniently be allotted to any one party.

§3-912. Private agreements among successors to decedent binding on personal representative

Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to the personal representative's obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration and to carry out the responsibilities of the office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee of such a trust is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing in this section relieves trustees of any duties owed to beneficiaries of trusts.

§3-913. Distributions to trustee

1. Personal representative authority to require bond. 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 the personal representative apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and the personal representative may withhold distribution until the court has acted.

2. Personal representative not negligent for failing to require bond. An inference of negligence on the part of the personal representative may not be drawn from the personal representative's failure to exercise the authority conferred by subsection 1.

§3-914. Disposition of unclaimed assets

If an heir, devisee or claimant cannot 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.

§3-915. Distribution to person under disability

1. Discharge according to will. A personal representative may discharge the personal representative's obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

2. Discharge under section 5-103 or to conservator. Unless contrary to an express provision in the will, a personal representative may discharge the personal representative's obligation to distribute to a minor or person under other disability as authorized by section 5-103 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

3. Discharge to attorney in fact or close relative. If the heir or devisee is under disability other than minority, a personal representative is authorized to distribute to:

A. An attorney in fact who has authority under a power of attorney to receive property for that person; or

B. The spouse, parent or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding \$10,000 a year or property not exceeding \$10,000 in value, unless the court authorizes a larger amount or greater value.

Persons receiving money or property for the person with a disability are obligated to apply the money or property to the support of that person, but may not pay themselves except by way of reimbursement for out-

of-pocket expenses for goods and services necessary for the support of the person with a disability. Excess sums must be preserved for future support of the person with a disability. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection.

§3-916. Uniform Estate Tax Apportionment Act

1. Short title. This section may be known and cited as the Uniform Estate Tax Apportionment Act.

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

A. "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(1) Any claim or expense allowable as a deduction for purposes of the tax;

(2) The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(3) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

B. "Estate tax" means a federal, state or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

C. "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

D. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

E. "Ratable" or "ratably" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied.

F. "Time-limited interest" means an interest in property that terminates on a lapse of time or on the occurrence or nonoccurrence of an event or that is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest.

G. "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be appor-

tioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

3. Apportionment by will or other dispositive instrument. This subsection applies when estate tax is apportioned expressly and unambiguously by a will, revocable trust or other dispositive instrument.

A. Except as otherwise provided in paragraph C:

(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly;

(2) Any portion of an estate tax not apportioned pursuant to subparagraph (1) must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor that expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in 2 or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this subparagraph:

(a) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(b) The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision; and

(3) If any portion of an estate tax is not apportioned pursuant to subparagraph (1) or (2), and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

B. Subject to paragraph C, and unless the decedent expressly and unambiguously directs the contrary:

(1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest:

(a) The tax attributable to the exonerated interest must be apportioned among the

other persons receiving interests passing under the instrument; or

(b) If the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax;

(2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient;

(3) Except as otherwise provided in subparagraph (4), if an apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under subsection 7, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property; and

(4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests.

C. A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

4. Statutory apportionment of estate taxes. To the extent that apportionment of an estate tax is not controlled by an instrument described in subsection 3 and except as otherwise provided in subsections 6 and 7:

A. Subject to paragraphs B, C and D, the estate tax is apportioned ratably to each person that has an interest in the apportionable estate;

B. A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to whom the interest in property is transferred;

C. If property is included in the decedent's gross estate pursuant to Section 2044 of the United States Internal Revenue Code of 1986, as amended, or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate; and

D. Except as otherwise provided in subsection 3, paragraph B, subparagraph (4) and except as to property to which subsection 7 applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

5. Credits and deferrals. Except as otherwise provided in subsections 6 and 7, this subsection applies to credits and deferrals of estate taxes.

A. A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to whom the estate tax is apportioned.

B. A credit for state or foreign estate taxes inures ratably to the benefit of all persons to whom the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

C. If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to whom the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge are allocated ratably among the persons receiving an interest in the property.

6. Insulated property; advancement of tax. This subsection applies when the estate includes prop-

erty that is unavailable for payment of estate tax due to impossibility or impracticability.

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

(1) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(2) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property that is required to be advanced by uninsured holders under paragraph C.

(3) "Insulated property" means property subject to a time-limited interest that is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

(4) "Uninsulated holder" means a person who has an interest in uninsured property.

(5) "Uninsulated property" means property included in the apportionable estate other than insulated property.

B. If an estate tax is to be advanced pursuant to paragraph C by persons holding interests in uninsured property subject to a time-limited interest other than property to which subsection 7 applies, the tax must be advanced, without further apportionment, from the principal of the uninsured property.

C. Subject to subsection 9, paragraphs B and D, an estate tax attributable to interests in insulated property must be advanced ratably by uninsured holders. If the value of an interest in uninsured property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under subsection 2, paragraph A, subparagraph (2) as if those interests were in uninsured property.

D. A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantively more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsured holders.

E. When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

F. Upon a distribution of insulated property for which, pursuant to paragraph D, the distributee becomes obligated to make a payment to uninsulated holders, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsulated holder.

7. Apportionment and recapture of special elective benefits. The reduction in estate tax due to election of a special elective benefit must be apportioned in accordance with this subsection.

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

(1) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(a) A reduced valuation of specified property that is included in the gross estate;

(b) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(c) An exclusion from the gross estate of specified property.

(2) "Specified property" means property for which an election has been made for a special elective benefit.

B. If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

C. An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture.

8. Securing payment of estate tax from property in possession of fiduciary. A fiduciary may ensure that a distributee will pay the distributee's share of the estate tax through one of the following methods.

A. A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

B. A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee.

C. As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee.

9. Collection of estate tax by fiduciary. A fiduciary responsible for payment of an estate tax may collect the tax due using the following methods.

A. A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person.

B. Except as otherwise provided in subsection 6, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) Any person having an interest in the apportionable estate that is not exonerated from the tax;

(2) Any other person having an interest in the apportionable estate; and

(3) Any person having an interest in the gross estate.

C. A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

D. The total tax collected from a person pursuant to this section may not exceed the value of the person's interest.

10. Right of reimbursement. A person may obtain reimbursement of estate tax as provided in this subsection.

A. A person required under subsection 9 to pay an estate tax greater than the amount due from the person under subsection 3 or 4 has a right to re-

imbursement from another person to the extent that the other person has not paid the tax required by subsection 3 or 4 and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under subsection 9, paragraph B.

B. A fiduciary may enforce the right of reimbursement under paragraph A on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

11. Action to determine or enforce section. A fiduciary, transferee or beneficiary of the gross estate may maintain an action for declaratory judgment to have a court determine and enforce this section.

12. Delayed application. The applicability of subsections 3 to 7 is governed by this subsection.

A. Subsections 3 to 7 do not apply to the estate of a decedent who dies on or within 3 years after July 1, 2019 nor to the estate of a decedent who dies more than 3 years after July 1, 2019 if the decedent continuously lacked testamentary capacity from the expiration of the 3-year period until the date of death.

B. For the estate of a decedent who dies on or after July 1, 2019 to which subsections 3 to 7 do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before July 1, 2019.

PART 10

CLOSING ESTATES

§3-1001. Formal proceedings terminating administration; testate or intestate; order of general protection

1. Formal proceedings terminating administration. A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims that arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and to adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing, the court may enter an order or orders on appropriate conditions, determining the persons entitled to distribution of the estate and, as circumstances require, approving settlement and directing or approving distribution of the estate

and discharging the personal representative from further claim or demand of any interested person.

2. Omitted parties. If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of any will previously admitted to probate or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

§3-1002. Formal proceedings terminating testate administration; order construing will without adjudicating testacy

A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate that will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims that arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and to adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those the devisee represents. If it appears that a part of the estate is intestate, the proceedings must be dismissed or amendments made to meet the provisions of section 3-1001.

§3-1003. Closing estates; by sworn statement of personal representative

1. Closing estate by sworn statement of personal representative. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court

no earlier than 6 months after the date of original appointment of a general personal representative for the estate a verified statement stating that the personal representative, or a previous personal representative, has:

A. Determined that the time limited for presentation of creditors' claims has expired;

B. Fully administered the estate of the decedent by making payment, settlement or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements that have been made to accommodate outstanding liabilities; and

C. Sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.

2. Termination of personal representative appointment. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

§3-1004. Liability of distributees to claimants

After assets of an estate have been distributed and subject to section 3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. A distributee is not liable to claimants for amounts received as exempt property or homestead or family allowances or for amounts in excess of the value of the distribution as of the time of distribution. As between distributees, each bears the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who fails to notify other distributees of the demand made by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted loses the right of contribution against other distributees.

§3-1005. Limitations on proceedings against personal representative

Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a

proceeding to assert those rights is commenced within 6 months after the filing of the closing statement. The rights barred by this section do not include rights to recover from a personal representative for fraud, misrepresentation or inadequate disclosure related to the settlement of the decedent's estate.

§3-1006. Limitations on actions and proceedings against distributees

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in the heir's or devisee's behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of 3 years after the decedent's death or one year after the time of its distribution, but all claims of creditors of the decedent are barred 9 months after the decedent's death. This section does not bar an action to recover property or value received as the result of fraud.

§3-1007. Certificate discharging liens securing fiduciary performance

After the personal representative's appointment has terminated, the personal representative, the personal representative's sureties or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the register that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

§3-1008. Subsequent administration

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this Code apply as appropriate, but no claim previously barred may be asserted in the subsequent administration.

PART 11**COMPROMISE OF CONTROVERSIES****§3-1101. Effect of approval of agreements involving trusts, inalienable interests or interests of 3rd persons**

A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

§3-1102. Procedure for securing court approval of compromise

The procedure for securing court approval of a compromise is as follows.

1. Written, signed agreement. The terms of the compromise must be set forth in an agreement in writing that must be executed by all competent persons and parents or legal guardians who have both actual custody and legal responsibility for a minor child acting for any minor child who has beneficial interests or claims that will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts are unknown and cannot reasonably be ascertained.

2. Submission to court for approval. Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust and other fiduciaries and representatives.

3. Hearing and order. After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents are bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate must be in accordance with the terms of the agreement.

PART 12**COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURES FOR SMALL ESTATES****§3-1201. Collection of personal property by affidavit**

1. Affidavit; duty to deliver property. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

A. The value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$40,000;

B. Thirty days have elapsed since the death of the decedent;

C. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

D. The claiming successor is entitled to payment or delivery of the property.

2. Securities. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection 1.

§3-1202. Effect of affidavit

The person paying, delivering, transferring or issuing personal property or the evidence of personal property pursuant to affidavit is discharged and released to the same extent as if the person dealt with a personal representative of the decedent. The person is not required to see to the application of the personal property or evidence of personal property or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer or issue any personal property or evidence of personal property, it may be recovered or its payment, delivery, transfer or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable to any personal representative of the estate or to any other person having a superior right.

§3-1203. Small estates; summary administrative procedure

If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and file a closing statement as provided in section 3-1204.

§3-1204. Small estates; closing by sworn statement of personal representative

1. Verified statement; contents. Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

A. To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

B. The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and

C. The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the administration to the distributees whose interests are affected.

2. Termination of personal representative appointment. If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

3. Effect of verified statement. A closing statement filed under this section has the same effect as one filed under section 3-1003.

§3-1205. Social security payments

If not less than 30 days after the death of a Maine resident entitled at the time of the resident's death to a monthly benefit or benefits under Title II of the Social

Security Act, all or part of the amount of such benefit or benefits not in excess of \$1,000 is paid by the United States to the surviving spouse, one or more of the decedent's children or descendants of the deceased children, the decedent's father or mother or the decedent's brother or sister, preference being given in the order named if more than one request for payment has been made by or for such individuals, upon an affidavit made and filed with the federal Department of Health and Human Services by the surviving spouse or other relative by whom or on whose behalf request for payment is made; and if the affidavit shows the date of death of the decedent, the relationship of the affiant to the decedent, that no personal representative for the decedent has been appointed and qualified and that, to the affiant's knowledge, there exists at the time of filing of the affidavit no relative of a closer degree of kindred to the decedent than the affiant, then such payment pursuant to the affidavit is deemed to be a payment to the legal representative of the decedent and, regardless of the truth or falsity of the statements made in the affidavit, constitutes a full discharge and release of the United States from any further claim for such payment to the same extent as if such payment had been made to the personal representative of the decedent's estate.

ARTICLE 4**FOREIGN PERSONAL REPRESENTATIVE;
ANCILLARY****PART 1****DEFINITIONS****§4-101. Definitions**

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

1. Local administration. "Local administration" means administration by a personal representative appointed in this State pursuant to appointment proceedings described in Article 3.

2. Local personal representative. "Local personal representative" includes any personal representative appointed in this State pursuant to appointment proceedings described in Article 3 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 4-205.

3. Resident creditor. "Resident creditor" means a person domiciled in or doing business in this State who is, or could be, a claimant against an estate of a nonresident decedent.

PART 2
POWERS OF FOREIGN PERSONAL
REPRESENTATIVES

§4-201. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration

At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt or deliver the personal property or the instrument evidencing the debt, obligation, stock or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of the domiciliary foreign personal representative's appointment and an affidavit made by or on behalf of the representative stating:

1. Date of death. The date of the death of the nonresident decedent;

2. No local administration. That no local administration, or application or petition for local administration, is pending in this State; and

3. Personal representative authority. That the domiciliary foreign personal representative is entitled to payment or delivery.

§4-202. Payment or delivery discharges

Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

§4-203. Resident creditor notice

Payment or delivery under section 4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

§4-204. Proof of authority; bond

If no local administration or application or petition for local administration is pending in this State, a domiciliary foreign personal representative may file with a court in this State in a county in which property belonging to the decedent is located authenticated copies of the foreign personal representative's appointment, of any official bond the foreign personal representative has given and a certificate, dated within 60

days, proving the foreign personal representative's current authority.

§4-205. Powers

A domiciliary foreign personal representative who has complied with section 4-204 may exercise as to assets in this State all powers of a local personal representative and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.

§4-206. Power of representatives in transition

The power of a domiciliary foreign personal representative under section 4-201 or 4-205 may be exercised only if there is no administration or application for administration pending in this State. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. A person who, before receiving actual notice of a pending local administration, has changed position in reliance upon the powers of a foreign personal representative may not be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations that have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for the foreign personal representative in any action or proceedings in this State.

§4-207. Ancillary and other local administrations; provisions governing

In respect to a nonresident decedent, the provisions of Article 3 govern:

1. Court proceedings in this State. Proceedings, if any, in a court of this State for probate of the will, appointment, removal, supervision and discharge of the local personal representative and any other order concerning the estate; and

2. Rights of local personal representative and parties. The status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

PART 3
JURISDICTION OVER FOREIGN
REPRESENTATIVES

§4-301. Jurisdiction by act of foreign personal representative

A foreign personal representative submits personally to the jurisdiction of the courts of this State in any proceeding relating to the estate by:

1. Filing appointment with court. Filing authenticated copies of the foreign personal representative's appointment as provided in section 4-204;

2. Receiving estate assets. Receiving payment of money or taking delivery of personal property under section 4-201.

Jurisdiction under this subsection is limited to the money or value of personal property collected; or

3. Acting as personal representative within State. Doing any act as a personal representative in this State that would have given the State jurisdiction over the foreign personal representative as an individual.

§4-302. Jurisdiction by act of decedent

In addition to jurisdiction conferred by section 4-301, a foreign personal representative is subject to the jurisdiction of the courts of this State to the same extent that the decedent was subject to jurisdiction immediately prior to death.

§4-303. Service on foreign personal representative

Service of process may be made upon the foreign personal representative in such manner as the Supreme Judicial Court shall by rule provide.

PART 4

JUDGMENTS AND PERSONAL REPRESENTATIVE

§4-401. Effect of adjudication for or against personal representative

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if the local personal representative were a party to the adjudication.

ARTICLE 5

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

PART 1

GENERAL PROVISIONS

§5-101. Short title

Parts 1, 2, 3, 4 and 5 of this Article may be known and cited as "the Uniform Guardianship and Protective Proceedings Act."

§5-102. Definitions

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

1. Adult. "Adult" means an individual at least 18 years of age or an emancipated individual under 18 years of age.

2. Adult subject to conservatorship. "Adult subject to conservatorship" means an adult for whom a conservator has been appointed under this Act.

3. Adult subject to guardianship. "Adult subject to guardianship" means an adult for whom a guardian has been appointed under this Act.

4. Best interest of the minor. "Best interest of the minor" means the standard of the best interest of the child according to the factors set forth in Title 19-A, section 1653, subsection 3.

5. Claim. "Claim" includes a claim against an individual or conservatorship estate, whether arising in contract, tort or otherwise.

6. Conservator. "Conservator" means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship. "Conservator" includes a co-conservator.

7. Conservatorship estate. "Conservatorship estate" means the property subject to conservatorship under this Act.

8. Full conservatorship. "Full conservatorship" means a conservatorship that grants the conservator all powers available under this Act.

9. Full guardianship. "Full guardianship" means a guardianship that grants the guardian all powers available under this Act.

10. Guardian. "Guardian" means a person appointed by a court to make decisions with respect to the personal affairs of an individual. "Guardian" includes a coguardian but does not include a guardian ad litem.

11. Guardian ad litem. "Guardian ad litem" means a person appointed to inform the court about, and to represent, the needs and best interest of an individual.

12. Individual subject to conservatorship. "Individual subject to conservatorship" means an adult or minor for whom a conservator has been appointed.

13. Individual subject to guardianship. "Individual subject to guardianship" means an adult or minor for whom a guardian has been appointed.

14. Less restrictive alternative. "Less restrictive alternative" means an approach to meeting an individual's needs that restricts fewer rights than would the appointment of a guardian or conservator. "Less restrictive alternative" includes supported decision making, appropriate technological assistance, appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances, or appointment of a representative payee.

15. Letters of office. "Letters of office" means judicial certification of guardianship or conservatorship.

16. Limited conservatorship. "Limited conservatorship" means a conservatorship that grants the conservator less than all powers available under this Act, grants powers over only certain property or otherwise restricts the powers of the conservator.

17. Limited guardianship. "Limited guardianship" means a guardianship that grants the guardian less than all powers available under this Act or otherwise restricts the powers of the guardian.

18. Minor. "Minor" means an unemancipated individual who is under 18 years of age.

19. Minor subject to conservatorship. "Minor subject to conservatorship" means a minor for whom a conservator has been appointed under this Act.

20. Minor subject to guardianship. "Minor subject to guardianship" means a minor for whom a guardian has been appointed under this Act.

21. Parent. "Parent" means a person who has established a parent-child relationship with the child under Title 19-A, chapter 61 and whose parental rights have not been terminated.

22. Person. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

23. Property. "Property" means anything that may be the subject of ownership and includes both real and personal property, tangible and intangible, or any interest therein.

24. Protective arrangement instead of conservatorship. "Protective arrangement instead of conservatorship" means a court order entered under section 5-503.

25. Protective arrangement instead of guardianship. "Protective arrangement instead of guardianship" means a court order entered under section 5-502.

26. Protective arrangement instead of guardianship or conservatorship. "Protective arrangement instead of guardianship or conservatorship" means a court order entered under Part 5, including an order authorizing a single transaction or more than one related transaction.

27. Record. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

28. Respondent. "Respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

29. Sign. "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or

B. To attach to or logically associate with the record an electronic symbol, sound or process.

30. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

31. Suitable. "Suitable," with respect to a guardian for a minor, means that the guardian can provide a safe and appropriate residence for the minor, understands and is prepared to follow the terms of the appointment and understands and can address the minor's needs and protect the minor from harm.

32. Supported decision making. "Supported decision making" means assistance from one or more persons of an individual's choosing:

A. In understanding the nature and consequences of potential personal and financial decisions that enables the individual to make the decisions; and

B. When consistent with the individual's wishes, in communicating a decision once it is made.

§5-103. Facility of transfer

1. Transfer of money or personal property to minor. Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding \$10,000 a year, by transferring it to:

A. A person who has the care and custody of the minor and with whom the minor resides;

B. A guardian of the minor;

C. A custodian under the Maine Uniform Transfers to Minors Act;

D. A financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor; or

E. The minor, if married or emancipated.

2. Responsibility for proper application. A person who transfers money or property in compliance with this section is not responsible for its proper application.

3. For benefit of minor; no personal financial benefit. A guardian or other person who receives

money or property for a minor under subsection 1, paragraph A or B may apply it only to the support, care, education, health and welfare of the minor and may not derive a personal financial benefit, but may be reimbursed for necessary expenses for the benefit of the minor. Any excess must be preserved for the future support, care, education, health and welfare of the minor, and any balance must be transferred to the minor when the minor becomes an adult or is otherwise emancipated.

§5-104. Subject matter jurisdiction

1. Jurisdiction; minors. Except to the extent that jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act and Title 4, section 152, subsection 5-A, the court has jurisdiction over a guardianship for a minor domiciled or present in this State. The court has jurisdiction over a conservatorship or protective arrangement instead of conservatorship for a minor domiciled in or having property located in this State.

2. Jurisdiction; adults. The court has jurisdiction over a guardianship, a conservatorship and an order for a protective arrangement instead of guardianship or conservatorship for an adult as provided in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Part 6.

3. Exclusive or concurrent jurisdiction. After service of notice in a proceeding seeking a guardianship, conservatorship or protective arrangement instead of guardianship or conservatorship and until termination of the proceeding, the court in which the petition is filed has:

A. Exclusive jurisdiction to determine the need for a guardianship, conservatorship or protective arrangement;

B. Exclusive jurisdiction to determine how property of the respondent that is subject to the law of this State must be managed, expended or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent or other claimant;

C. Concurrent jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

D. If a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

4. Exclusive and continuing jurisdiction. A court that appoints a guardian or conservator, or authorizes a protective arrangement instead of guardianship or conservatorship, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the appointment or protective arrangement expires by its terms.

§5-105. Transfer of proceeding

1. Guardianship or conservatorship subject to transfer provisions. This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of Part 6, subpart 3.

2. Transfer if serves best interest of individual. After the appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding to a court in another county in this State or to another state if transfer will serve the best interest of the individual subject to the guardianship or conservatorship.

3. Proceeding pending in another state or foreign country. If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship is filed in a court in this State, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

4. Petition for appointment in this State. A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in this State if jurisdiction in this State is or will be established. The appointment may be made on proof of appointment in the other state or foreign country and presentation of a certified copy of the part of the court record in the other state or country specified by the court in this State.

5. Notice; appointment unless not in best interest of respondent. Notice of hearing on a petition under subsection 4, together with a copy of the petition, must be given to the respondent, if the respondent is 14 years of age or older at the time of the hearing, and to the persons that would be entitled to notice if the procedures for appointment of a guardian or conservator under this Act were applicable. The court shall make the appointment in this State unless it determines that the appointment would not be in the best interest of the respondent.

6. Copy of order of appointment. Not later than 14 days after appointment under subsection 5, the guardian or conservator shall give a copy of the order of appointment to the individual subject to guardianship or conservatorship, if the individual is 14 years of age or older, and to all persons given notice of the hearing on the petition.

§5-106. Venue

1. Guardianship proceeding for minor. Venue for a guardianship proceeding for a minor is in:

A. The county or division of this State in which the minor, the petitioner or a parent or guardian of the child resides or is present at the time the proceeding commences; or

B. The county or division of this State where another proceeding concerning the custody and parental rights of the minor is pending.

2. Guardianship proceeding or protective arrangement for adult. Venue for a guardianship proceeding or protective arrangement instead of guardianship for an adult is in:

A. The county of this State in which the respondent resides;

B. If the respondent has been admitted to an institution by order of a court of competent jurisdiction, the county in which the court is located; or

C. In a proceeding for appointment of an emergency guardian of an adult, the county in which the respondent is present.

3. Conservatorship proceeding or protective arrangement. Venue for a conservatorship proceeding or protective arrangement instead of conservatorship is in:

A. The county of this State in which the respondent resides, whether or not a guardian has been appointed in another county or another jurisdiction; or

B. If the respondent does not reside in this State, any county of this State in which property of the respondent is located.

4. Proceedings in more than one county. If proceedings under this Act are brought in more than one county in this State, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding.

§5-107. Practice in court

1. Rules. Except as otherwise provided in this Act, the Maine Rules of Probate Procedure, the Maine Rules of Civil Procedure and the Maine Rules of Evidence, including rules concerning appellate review, govern a proceeding under this Act.

2. Consolidation. If proceedings under this Act for the same individual are commenced or pending in the same court, the proceedings may be consolidated.

§5-108. Letters of office

1. Guardian; letters of office. On a guardian's filing of an acceptance of appointment, the court shall issue appropriate letters of office.

2. Conservator; letters of office. On a conservator's filing of an acceptance of appointment and filing of any required bond or compliance with any other asset-protection arrangement required by the court, the court shall issue appropriate letters of office.

3. Limitations stated. Limitations on the powers of the guardian or conservator or on the property subject to conservatorship must be stated in the letters of office.

4. Limitations at any time; new letters of office; notice. Upon request or sua sponte, the court at any time may limit the powers conferred on the guardian or conservator. The court shall issue new letters of office to reflect the limitation. The court shall give notice of the limitation to the guardian or conservator, the individual subject to guardianship or conservatorship, each parent of a minor subject to guardianship or conservatorship and any other person as the court determines.

§5-109. Effect of acceptance of appointment

A guardian or conservator that accepts appointment submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

§5-110. Coguardian; coconservator

1. Appointment at any time. The court at any time may appoint a coguardian or coconservator to serve immediately or when a designated future event occurs.

2. Acceptance of appointment. A coguardian or coconservator appointed to serve immediately may act when the coguardian or coconservator files an acceptance of appointment.

3. Service upon designated future event. A coguardian or coconservator appointed to serve when a designated future event occurs may act when:

A. The designated event occurs; and

B. The coguardian or coconservator files an acceptance of appointment.

4. Joint decisions. Unless an order of appointment under subsection 1 or subsequent order states otherwise, coguardians or coconservators shall make decisions jointly.

§5-111. Judicial appointment of successor guardian or successor conservator

1. Appointment of successor by court. The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated future event occurs.

2. Petition to appoint successor. A person entitled under section 5-202 or 5-302 to petition the court to appoint a guardian may petition the court to appoint a successor guardian. A person entitled under section 5-402 to petition the court to appoint a conservator may petition the court to appoint a successor conservator.

3. Service upon designated future event. A successor guardian or successor conservator appointed to serve when a designated future event occurs may act as guardian or conservator if:

- A. The designated event occurs; and
- B. The successor guardian or successor conservator files an acceptance of appointment.

4. Succeeds to powers. A successor guardian or successor conservator succeeds to the predecessor's powers unless otherwise provided by the court.

§5-112. Effect of death, removal or resignation of guardian or conservator

1. Termination. Appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator or when the court approves a resignation of the guardian or conservator under subsection 2.

2. Petition to resign; approval. A guardian or conservator must petition the court to resign. The petition may include a request that the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation is approved by the court.

3. Liability. Death, removal or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for an action taken on behalf of the individual subject to guardianship or conservatorship or to account for the individual's money or other property.

§5-113. Notice of hearing

1. Notice by movant. If notice of a hearing under this Act is required, the movant shall give notice of the date, time and place of the hearing to the person to be notified unless otherwise ordered by the court for good cause. Except as otherwise provided in this Act, notice must be given in compliance with the Maine Rules of Probate Procedure, Rule 4 or the Maine Rules of Civil Procedure, Rule 4 at least 14 days before the hearing.

2. Proof of notice. Proof of notice of a hearing under this Act must be made before or at the hearing and filed in the proceeding.

3. Type size; plain language. Notice of a hearing under this Act must be in at least 16-point type, in plain language and, to the extent feasible, in a language in which the recipient is proficient.

§5-114. Waiver of notice

1. Waiver by person. Except as otherwise provided in subsection 2, a person may waive notice under this Act in a record signed by the person or the person's attorney and filed in the proceeding.

2. Waiver prohibited. A respondent, an individual subject to guardianship, an individual subject to conservatorship, an individual subject to a protective arrangement instead of guardianship or conservatorship, an appointed guardian or an appointed conservator may not waive notice under this Act.

§5-115. Guardian ad litem

At any stage of a proceeding under this Act, the court may appoint a guardian ad litem for an individual to identify and represent the individual's best interest or perform other duties if the court determines the individual's interest otherwise would not be adequately represented. If a conflict of interest or potential conflict of interest does not exist, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state on the record the duties of the guardian ad litem and the reasons for the appointment, as well as responsibility for payment of the guardian ad litem fees.

§5-116. Request for notice

A person that is interested in the welfare of a respondent, individual subject to guardianship or conservatorship or individual subject to a protective arrangement instead of guardianship or conservatorship and that is not otherwise entitled to notice under this Act may file a request with the court for notice. The court shall send or deliver a copy of the request to the guardian, to the custodian if one has been appointed and to the individual who is subject to the guardianship, conservatorship or protective arrangement. The recipient of the notice may file an objection within 60 days. If an objection is filed, the court shall hold a hearing on the request. If the court approves the request, the court shall give notice of the approval to the guardian or conservator if one has been appointed or to the respondent if no guardian or conservator has been appointed. The request must include a statement showing the interest of the person making it and the address of the person or an attorney for the person to whom notice is to be given.

§5-117. Disclosure of bankruptcy or criminal history

1. Disclosure; petition. As part of the petition to be appointed a guardian or conservator, a person shall disclose to the court whether the person:

- A. Is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or
- B. Has been convicted of:
 - (1) A felony;
 - (2) A crime involving dishonesty, neglect, violence or use of physical force; or

(3) Any other crime relevant to the functions the individual would assume as guardian or conservator.

2. Agent; convictions; approval. A guardian or conservator may not engage an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence or use of physical force or any other crime relevant to the functions the agent is being engaged to perform promptly without prior approval of the court.

3. Finances manager agent; debtor; disclosure. If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency or receivership proceeding, the conservator promptly shall disclose that knowledge to the court.

§5-118. Multiple appointments or nominations

If a respondent or other person makes more than one appointment or nomination of a guardian or a conservator, the latest in time governs.

§5-119. Compensation and expenses; in general

1. Attorney for respondent. Unless otherwise compensated for services rendered, an attorney for a respondent in a proceeding under this Act is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the respondent.

2. Attorney or other person. Unless otherwise compensated for services rendered, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or beneficial to an individual for whom a protective arrangement instead of guardianship or conservatorship was ordered is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the individual.

3. Court review. After notice to all interested persons, on petition of an interested person, the propriety of employment of any person by a conservator or guardian, including any attorney, accountant, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed may be reviewed by the court. Any person who has received excessive compensation or reimbursement of inappropriate expenses for services rendered may be ordered to make appropriate refunds. The factors set forth in section 3-721, subsection 2 must be considered as guides in determining the reasonableness of compensation under this section.

4. Costs assessed against petitioner. If the court dismisses a petition under this Act and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or visitor against the petitioner.

§5-120. Liability of guardian or conservator for act of individual subject to guardianship or conservatorship

A guardian or conservator is not personally liable to a 3rd person for the act of an individual subject to guardianship or conservatorship solely by reason of the guardianship or conservatorship.

§5-121. Petition after appointment for instructions or ratification

1. Petition. A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act.

2. Instruction or order. On notice and hearing on a petition under subsection 1, the court may give an appropriate instruction and enter any appropriate order.

§5-122. Third-party acceptance of authority of guardian or conservator

1. Refusal to recognize authority required. A person must refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The person has actual knowledge or a reasonable belief that the guardian's or conservator's letters of office are invalid or that the guardian or conservator is exceeding or improperly exercising authority granted by the court; or

B. The person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

2. Refusal to recognize authority discretionary. A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The guardian's or conservator's proposed action would be inconsistent with this Act; or

B. The person makes, or has actual knowledge that another person has made, a report to adult protective services or child protective services stating a good faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

3. Report refusal to court. A person that refuses to accept the authority of a guardian or conservator in accordance with subsection 2 shall report the refusal and the reason for refusal to the court. The court on receiving a report shall consider whether re-

removal of the guardian or conservator or other action is appropriate.

4. Petition to require acceptance. A guardian or conservator may petition the court to require a 3rd party to accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship.

§5-123. Use of agent by guardian or conservator

1. Delegation consistent with plan and fiduciary duty. Except as otherwise provided in subsection 3, a guardian or conservator may delegate a power to an agent that a prudent guardian or conservator of comparable skills could prudently delegate under the circumstances if the delegation is consistent with the guardian's or conservator's plan and fiduciary duty.

2. Delegating a power. In delegating a power under subsection 1, the guardian or conservator shall exercise reasonable care, skill and caution in:

A. Selecting the agent;

B. Establishing the scope and terms of the agent's work in accordance with the guardian's or conservator's plan;

C. Monitoring the agent's performance and compliance with the delegation; and

D. Redressing action or inaction of the agent that would constitute a breach of the guardian's or conservator's duties if performed by the guardian or conservator.

3. Delegation limitation. A guardian or conservator may not delegate all powers to an agent.

4. Agent performing a delegated power. In performing a power delegated under this section, an agent shall:

A. Exercise reasonable care to comply with the terms of the delegation and use reasonable care in the performance of the delegated power; and

B. If the agent has been delegated the power to make a decision on behalf of the individual subject to guardianship or conservatorship, in making the decision use the same decision-making standard the guardian or conservator would be required to use in making the decision.

5. Jurisdiction of court. By accepting a delegation of a power from a guardian or conservator under this section, an agent submits to the jurisdiction of the courts of this State in an action involving the agent's performance as agent.

6. Liability. A guardian or conservator that delegates and monitors a power in compliance with this section is not liable for the decisions or actions of the agent.

§5-124. Temporary substitute guardian or conservator

1. Temporary substitute guardian. The court may appoint a temporary substitute guardian for a period not longer than 6 months for an individual subject to guardianship if:

A. A proceeding to remove an existing guardian is pending; or

B. The court finds an existing guardian is not effectively performing the guardian's duties and the welfare of the individual requires immediate action.

2. Temporary substitute conservator. The court may appoint a temporary substitute conservator for a period not longer than 6 months for an individual subject to conservatorship if:

A. A proceeding to remove an existing conservator is pending; or

B. The court finds that an existing conservator is not effectively performing the conservator's duties and the welfare of the individual or the conservatorship estate requires immediate action.

3. Powers. Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order of appointment of the guardian or conservator. The authority of an existing guardian or conservator is suspended for as long as the temporary substitute guardian or conservator has authority.

4. Notice. The court shall give notice of appointment of a temporary substitute guardian or temporary substitute conservator under this section not later than 5 days after the appointment to:

A. The individual subject to guardianship or conservatorship;

B. The affected guardian or conservator; and

C. In the case of a minor, each parent of the minor and any person currently having custody or care of the minor.

5. Removal. The court may remove a temporary substitute guardian or temporary substitute conservator appointed under this section at any time. The temporary substitute guardian or temporary substitute conservator shall make any report the court requires.

6. Application. Except as otherwise provided in this section, the provisions of this Act:

A. Concerning a guardian for a minor apply to a temporary substitute guardian for a minor;

B. Concerning a guardian for an adult apply to a temporary substitute guardian for an adult; and

C. Concerning a conservator apply to a temporary substitute conservator.

§5-125. Registration of order; effect

1. Registration of guardianship order. If a guardian has been appointed for an individual in another state and a petition for guardianship of the individual is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in this State by filing as a foreign judgment, in a court of an appropriate county of this State, certified copies of the order and letters of office.

2. Registration of conservatorship order. If a conservator is appointed in another state and a petition for conservatorship is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court, may register the conservatorship in this State by filing as a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office and any bond or other asset-protection arrangement required by the court.

3. Exercise of powers. On registration of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in this State all powers authorized in the order except as prohibited by the law of this State other than this Act. If the guardian or conservator is not a resident of this State, the guardian or conservator may maintain an action or proceeding in this State subject to any condition imposed by this State on a nonresident party.

4. Enforcement of registered order. The court may grant any relief available under this Act and law of this State other than this Act to enforce a registered order.

§5-126. Grievance against guardian or conservator

1. File a grievance with the court. An individual who is subject to guardianship or conservatorship, or a person interested in the welfare of an individual subject to guardianship or conservatorship, who reasonably believes a guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with this Act may file a grievance with the court. The grievance must be in writing or another record.

2. Procedure upon receiving grievance. Subject to subsection 3, after receiving a grievance under subsection 1, the court:

A. Shall review the grievance and, if necessary to determine the appropriate response to the grievance, court records related to the guardianship or conservatorship;

B. Shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and the grievance supports a reasonable belief that:

(1) Removal of the guardian and appointment of a successor may be appropriate in accordance with section 5-318;

(2) Termination or modification of the guardianship may be appropriate under section 5-319;

(3) Removal of the conservator and appointment of a successor may be appropriate under section 5-430;

(4) Termination or modification of the conservatorship may be appropriate under section 5-431; and

C. May take any action supported by the grievance and record, including:

(1) Ordering the guardian or conservator to provide to the court a report, accounting, inventory, updated plan or other information;

(2) Appointing a guardian ad litem;

(3) Appointing an attorney for the individual subject to guardianship or conservatorship; or

(4) Scheduling a hearing.

3. Similar grievance filed within 6 months. The court may decline to proceed under subsection 2 if a similar grievance was made within the preceding 6 months and the court followed the procedures of subsection 2 in considering the grievance.

§5-127. Delegation by parent or guardian

1. Delegation; power of attorney. A parent or a guardian of a minor or individual subject to guardianship, by a power of attorney, may delegate to another person, for a period not exceeding 12 months, any power regarding care, custody or property of the minor or individual subject to guardianship, except the power to consent to marriage, adoption or termination of parental rights to the minor. A delegation of powers by a court-appointed guardian becomes effective only when the power of attorney is filed with the court. A delegation of powers under this section does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor or individual subject to guardianship. A delegation of powers under this section is subject to the same court supervision that applies to temporary substitute guardians as described in section 5-124, subsection 5. Any delegation under this section may be revoked or amended by the appointing parent or guardian in writing and delivered to the person to whom the powers were delegated and to other interested persons.

2. National Guard or Reserves; extension. Notwithstanding subsection 1, unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under that active duty order or until an order of the court so provides.

This subsection applies only if the parent's or guardian's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress.

3. Temporary care of minor. This subsection applies when a parent or guardian executes a power of attorney under subsection 1 for the purpose of providing for the temporary care of a minor.

A. The execution of a power of attorney under subsection 1, without other evidence, does not constitute abandonment, abuse or neglect. A parent or guardian of a minor may not execute a power of attorney with the intention of permanently avoiding or divesting the parent or guardian of parental and legal responsibility for the care of the minor. Upon the expiration or termination of the power of attorney, the minor must be returned to the custody of the parent or guardian as soon as reasonably possible unless otherwise ordered by the court.

B. Unless the power of attorney is terminated, the agent named in the power of attorney shall exercise parental or legal authority on a continuous basis without compensation from the State for the duration of the power of attorney authorized by subsection 1. Nothing in this subsection disqualifies the agent from applying for and receiving benefits from any state or federal program of assistance for the minor or the agent. Nothing in this subsection prevents individuals or religious, community or other charitable organizations from voluntarily providing the agent with support related to the care of the minor while the minor is in the temporary care of the agent.

C. A minor may not be considered placed in foster care or in any way a ward of the State by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection 1. The agent named in the power of attorney may not be considered a family foster home by virtue of the par-

ent's or guardian's execution of a power of attorney authorized by subsection 1 and is not subject to any laws regarding the licensure or regulation of family foster homes unless licensed as a family foster home. Nothing in this subsection disqualifies the agent from being or becoming a family foster home licensed by the State or prevents the placement of the minor in the agent's care if the minor enters state custody.

4. Background check. An organization, other than an organization whose primary purpose is to provide free legal services or to provide hospital services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians with the process of executing a power of attorney for the temporary care of a minor shall ensure that a background check is conducted for the agent and any adult members of the agent's household, whether by completing the background check directly or by verifying that a current background check has already been conducted. The background check must include the following sources, and the results must be shared with the parent or guardian and the proposed agent:

A. A screening for child and adult abuse, neglect or exploitation cases in the records of the Department of Health and Human Services; and

B. A criminal history record check that includes information obtained from the Federal Bureau of Investigation.

The organization shall maintain records on the training and background checks of agents, including the content and dates of training and full transcripts of background checks, for a period of not less than 5 years after the minor attains 18 years of age. The organization shall make the records available to a parent or guardian executing a power of attorney under this section and to the ombudsman under Title 22, section 4087-A and any local, state or federal authority conducting an investigation involving the agent, the parent or guardian or the minor.

Without regard to whether an organization is included or excluded by the terms of this subsection, nothing in this section changes the restrictions on the unauthorized practice of law as provided in Title 4, section 807 with regard to the preparation of powers of attorney.

5. Disqualification of agent. An employee or volunteer for an organization described in subsection 4 may not further assist with a process that results in the completion of a power of attorney for the temporary care of a minor if the background checks conducted pursuant to subsection 4, paragraphs A and B disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the

agent from becoming a licensed family foster home in the State.

6. Penalties. The following penalties apply to violations of this section.

A. An organization that knowingly fails to perform or verify the background checks or fails to share the background check information as required by subsection 4 is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.

B. An organization or an employee or volunteer of an organization that continues to assist a parent, guardian or agent in completing a power of attorney under subsection 4 if the background checks conducted pursuant to subsection 4 disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.

C. An organization or an employee or volunteer of an organization that knowingly fails to maintain records or to disclose information as required by subsection 4 is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.

PART 2

GUARDIANSHIP OF MINOR

§5-201. Appointment and status of guardian

A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location of the guardian or the minor. This section does not apply to permanency guardians appointed in District Court child protective proceedings under Title 22, section 4038-C. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending.

§5-202. Parental appointment of guardian

1. Appointment by parent. A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment before confirmation by the court.

2. Petition to confirm selection, terminate right to object. Upon petition of an appointing parent and a finding that the appointing parent will likely become unable to care for the child within 2 years, and after notice as provided in section 5-205, subsection 1, the

court, before the appointment becomes effective, may confirm the parent's selection of a guardian and terminate the rights of others to object.

3. Appointment effective. Subject to section 5-203, the appointment of a guardian becomes effective upon the appointing parent's death, an adjudication that the parent is an incapacitated person or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever first occurs.

4. Acceptance of appointment. The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:

A. File the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and

B. Give written notice of the acceptance of appointment to every parent, if living, the minor, if the minor has attained 14 years of age, and a person other than the parent having care and custody of the minor.

5. Notice of right to object. Unless the appointment was previously confirmed by the court, the notice given under subsection 4, paragraph B must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 5-203.

6. Petition to confirm appointment. Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in section 5-205, subsection 1.

7. Parental rights not superseded; priority. The appointment of a guardian by a parent does not supersede the parental rights of any parent. If all parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent that is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

8. Relation back of powers. The powers of a guardian who timely complies with the requirements of subsections 4 and 6 relate back to give acts by the guardian that are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.

9. Termination of authority. The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 5-203.

§5-203. Objection by minor or others to parental appointment

Until the court has confirmed an appointee under section 5-202, a minor who is the subject of an appointment by a parent and who has attained 14 years of age, the other parent or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent if all other requirements for appointment, including appointment over the objection of a parent, are met. The court may treat the filing of an objection as a petition for the appointment of an emergency or interim guardian under section 5-204 and proceed accordingly.

§5-204. Judicial appointment of guardian; conditions for appointment

1. Petition. A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

2. Appointment. The court may appoint a guardian for a minor if the court finds the appointment is in the best interest of the minor, finds the proposed guardian is suitable and finds:

- A. That the parents consent;
- B. That all parental rights have been terminated;
or
- C. By clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights, including but not limited to:
 - (1) The parent is currently unwilling or unable to meet the minor's needs and that will have a substantial adverse effect on the minor's well-being if the minor lives with the parent; or
 - (2) The parent has failed, without good cause, to maintain a parental relationship with the minor, including but not limited to failing to maintain regular contact with the minor for a length of time that evidences an intent to abandon the minor.

3. Priority for appointment. If a guardian is appointed by a parent pursuant to section 5-202 and the appointment has not been prevented or terminated

under section 5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 5-202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

4. Appointment of a guardian on an emergency basis. If the court finds that following the procedures of this Part will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed 90 days, and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of the hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained 14 years of age, to each living parent of the minor and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment must be given within 48 hours after the appointment. The court shall schedule a hearing on the appointment of the guardian within 14 days but not less than 7 days after issuance of the order appointing the guardian, except that a parent may request that the hearing take place sooner. The petitioner bears the burden of proof on the appropriateness of the appointment pursuant to this section.

5. Child support. When appointing a guardian, including on an emergency or interim basis, the court's order must indicate whether there are any support orders involving the child presently in effect through judicial or administrative proceedings and the effect of the guardianship appointment on the orders. The court shall consider whether to order a parent to pay child support to the guardian in accordance with Title 19-A, Part 3. A guardian must be treated as a caretaker relative for computation of a parental support obligation pursuant to Title 19-A, section 2006, subsection 4. The court may reserve the question of support or decline to issue an order if it determines that an order for support is not warranted at the time of the appointment. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this subsection.

§5-205. Judicial appointment of guardian; procedure

1. Petition; notice of hearing. After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

A. The minor, if the minor has attained 14 years of age and is not the petitioner;

B. Any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the petition;

C. Each living parent of the minor or, if there is none, the adult nearest in kinship who can be found;

D. Any person nominated as guardian by the minor if the minor has attained 14 years of age;

E. Any appointee of a parent whose appointment has not been prevented or terminated under section 5-203; and

F. Any guardian or conservator currently acting for the minor in this State or elsewhere.

If the court finds that receiving information from the Department of Health and Human Services may be necessary for the determination of any issue before the court, it may order a Department of Health and Human Services employee to attend the hearing and to provide information relevant to the proceeding. When receiving information by oral testimony that is confidential pursuant to Title 22, section 4008, the court shall close the proceeding and ensure that it is recorded. When receiving information contained in written or media records that is confidential pursuant to Title 22, section 4008, the court shall review those records in camera, weighing the confidentiality of such records against the necessity for counsel and the parties to have access to them, and enter an appropriate order regarding the scope and manner of access. The court, in its discretion, may take other measures necessary to preserve the confidentiality of the information received.

2. Appointment; other disposition. The court, after the hearing scheduled pursuant to subsection 1, shall make the appointment of a guardian if the court finds that venue is proper, the required notices have been given, the conditions of section 5-204, subsection 2 have been met and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

3. Priority of minor's nominee. The court shall appoint a person or persons nominated by the minor, if

the minor has attained 14 years of age, in accordance with the requirements of section 5-204.

4. Appointment of counsel. A nonconsenting parent whose parental rights have not been terminated is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent guardian or petitioner when a parent or legal custodian has counsel.

5. Attorney for a minor; notice to minor. If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age. A minor may appear with or through counsel, but the court is not restricted from requiring the minor to be present for some or all of a hearing or other proceeding. A minor 14 years of age or older must receive notice of any proceeding subsequent to the appointment of a guardian through the same means as required for any other party, and the minor may consent, object or otherwise participate in the proceeding.

6. Informed consent of parent. If the petition for guardianship is filed by or with the consent of a parent, the petition must include a consent signed by the parent verifying that the parent understands the nature of the guardianship and knowingly and voluntarily consents to the guardianship. If a parent informs the court after the petition has been filed that the parent wishes to consent to the guardianship, the court shall require the parent to sign the consent form at that time. The consent required by this section must be on a court form or substantially similar document.

7. Term or duration of order. The court may specify the term of the appointment based on the parties' agreement or the court's findings. The term may be extended or otherwise modified by agreement of the parties or after a hearing. If no term is specified, the appointment remains in place until modified or the occurrence of an event resulting in termination set forth in section 5-210.

If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides as long as the parent's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President

of the United States or the United States Congress.

8. Interim order. Upon motion by a party or the court's initiative, and pursuant to an agreement of the parties or findings made after a hearing, the court may enter an interim order appointing a guardian for a period of time up to 6 months or pending the court's order after the scheduled final hearing on a petition for appointment, if such an order is necessary to provide for the minor's housing, health, education, medical or other essential needs prior to the hearing. Any interim order must meet the requirements of section 5-204 and this section, including notice, and may be extended or modified pursuant to an agreement of the parties or findings made after a hearing.

9. Mediation. The court may refer the parties to mediation at any time after a petition or motion is filed, if meditation services are available at a reasonable fee or no cost, and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that any party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation. An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

10. Identifying information sealed. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or the minor would be jeopardized by disclosure of identifying information, including but not limited to the address of a party or the minor, the information must be sealed by the register or clerk and not disclosed to any other party or to the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or minor and determines that the disclosure is in the interest of justice.

§5-206. Terms of order appointing guardian

1. Terms of order. An order appointing a guardian of a minor must include the following:

- A. The reasons for the appointment of the guardian, including whether there was any agreement by the parties or findings after a hearing;
- B. The powers and duties granted to the guardian, including those set forth in section 5-207;
- C. The rights and responsibilities retained by the parent, as described in subsection 3;

D. The anticipated duration of the appointment, including whether it remains in place until a petition to modify or terminate and whether the parties agree to termination after a particular event, such as return from deployment;

E. A description of the process and standards for modification and termination; and

F. Notice of the court's authority to hold a hearing and find that a party has violated a part of the order and is in contempt and to order relief to the other party for the violations or contempt.

2. Other orders concerning minor. If any orders regarding custody or other parental rights with respect to a minor are in effect at the time of the appointment of a guardian of the minor, the order must refer to the orders and indicate the effect of the appointment on the rights and responsibilities set forth in the orders.

3. Rights and responsibilities retained by parent. An order appointing a guardian of a minor must specify whether the minor's parent retains any of the following rights and responsibilities after the appointment and, if any such rights or responsibilities are not retained, the reasons they are not retained:

A. A schedule of parent-child contact or a determination by the court that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the minor. The court may determine the reasonable frequency and duration of parent-child contact and may set conditions for parent-child contact that are in the best interest of the minor. Any schedule of contact must reflect any existing parent-child contact order in effect to the extent reasonably practicable and consistent with the court's findings or the agreement of the parties. The court may set forth specific conditions that must be satisfied by the parent prior to the start of some or all aspects of the contact schedule;

B. Access to records and information regarding the minor as provided under Title 19-A, section 1653, subsection 2, paragraph D, subparagraph (4);

C. Parental rights and responsibilities as described under Title 19-A, section 1501, subsection 5; and

D. Child support as defined in Title 19-A, section 1501, subsection 2.

4. Parent as coguardian. A parent may copetition and be appointed as a coguardian of the parent's minor child if the court determines a joint appointment with a nonparent is in the best interest of the minor and is made with the parent's consent.

§5-207. Duties of guardian

1. Guardian has duties and responsibilities of a parent. Except as otherwise limited by the court, a guardian of a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health and welfare. A guardian shall act at all times in the best interest of the minor and exercise reasonable care, diligence and prudence.

2. Specific duties and responsibilities. A guardian shall:

A. Become or remain personally acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capacities, limitations, needs, opportunities and physical and mental health;

B. Take reasonable care of the minor's personal effects and bring a protective proceeding if necessary to protect other property of the minor;

C. Expend money of the minor that has been received by the guardian for the minor's current needs for support, care, education, health and welfare;

D. Conserve any excess money of the minor for the minor's future needs, but if a conservator has been appointed for the estate of the minor, the guardian shall pay the money at least quarterly to the conservator to be conserved for the minor's future needs;

E. Report the condition of the minor and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the minor's welfare or as required by court rule; and

F. Inform the court of any change in the minor's custodial dwelling or address.

3. Reporting on the status of the minor. The court may require the guardian of a minor to submit regular status reports about the minor, to be submitted under oath or affirmation to the court and served on the parent and guardian ad litem, if still active, on an annual basis or under other conditions set by the court.

A. The court may require the status report to include specific information, including but not limited to the following to the extent applicable to the guardianship:

(1) The current address of the minor and each parent;

(2) The minor's health care and health needs, including any medical and mental health services the child received;

(3) The minor's educational needs and progress, including the name of the minor's

school, day care or other early education program, the minor's grade level and the minor's educational achievements;

(4) Contact between the minor and the minor's parents, including the frequency and duration of the contact and whether it was supervised;

(5) How the parents have been involved in decision making for the minor;

(6) Whether the parents have provided any financial support for the minor;

(7) How the guardian has carried out the guardian's responsibilities and duties under the order of appointment;

(8) An accounting of any funds received on the minor's behalf;

(9) The minor's strengths, challenges and any other areas of concern; and

(10) Recommendations with supporting reasons as to whether the guardianship order should be continued, modified or terminated.

B. Before deciding whether to require status reports, the court shall consider whether reporting would create a substantial likelihood of harm to the health, safety or liberty of the minor.

C. The contents of status reports are confidential and may not be released to any nonparty except by court order.

D. A parent may petition the court to seek a status report from the guardian if one is not otherwise required. A person who is not a parent but is interested in the minor's welfare may petition the court to seek a status report based upon specific concerns about the minor's care.

E. Nothing in this subsection limits a court's authority to otherwise supervise the guardianship, including scheduling a status conference to address matters raised in a status report or to be held at a specified time after the entry of the order or appointing a guardian ad litem or visitor to conduct an investigation. The court shall accept any information submitted by a minor 14 years of age or older regarding the guardianship.

§5-208. Powers of guardian

1. Guardian has powers of a parent. Except as otherwise limited by the court, a guardian of a minor has the powers of a parent regarding the minor's support, care, education, health and welfare.

2. Specific powers. A guardian may:

A. Apply for and receive money for the support of the minor otherwise payable to the minor's parent, guardian or custodian under the terms of any

statutory system of benefits or insurance or any private contract, devise, trust, conservatorship or custodianship:

B. If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the minor, take custody of the minor and establish the minor's place of custodial dwelling, but may establish or move the minor's custodial dwelling outside the State only upon express authorization of the court;

C. If a conservator for the estate of a minor has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor or to pay money for the benefit of the minor;

D. Except as limited by section 5-807, consent to medical or other care, treatment or service for the minor;

E. Consent to the marriage of the minor; and

F. If reasonable under all of the circumstances, delegate to the minor certain responsibilities for decisions affecting the minor's well-being.

3. Consent to adoption. The court may specifically authorize the guardian to consent to the adoption of the minor.

4. Powers of coguardians. If coguardians are appointed, the powers of the guardians are joint and several, unless limited by the appointing document.

§5-209. Rights and immunities of guardian

1. Reasonable compensation and reimbursement. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing provided by the guardian to the minor, but only as approved by the court. If a conservator, other than the guardian or a person who is affiliated with the guardian, has been appointed for the estate of the minor, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

2. Personal liability. A guardian need not use the guardian's personal funds for the minor's expenses. A guardian is not liable to a 3rd person for acts of the minor solely by reason of the guardianship. A guardian is not liable for injury to the minor resulting from the negligence or act of a 3rd person providing medical or other care, treatment or service for the minor except to the extent that a parent would be liable under the circumstances.

§5-210. Modification or termination of guardianship; other proceedings after appointment

1. Modification of guardianship order. A guardian of a minor, a parent of a minor, a person interested in the welfare of a minor or the minor, if 14 years of age or older, may file a motion asking the court to modify the terms of an order appointing a guardian or to take other action in the best interest of the minor as circumstances require. The motion must be filed with the court and served on all parties entitled to notice. Unless the motion specifies that it is filed with the consent of all parties entitled to notice, the matter must be set for hearing to determine whether there has been a substantial change in circumstances necessitating modification of the order and how the court should modify the order in furtherance of the best interest of the minor and the parent's rights. The court may identify certain requirements that must be met before specific provisions of the order are modified. A court may modify a term of a guardianship order as needed to grant relief to a party to address contempt or other failure to follow the order.

2. Termination of guardianship. A guardianship of a minor terminates upon the minor's death, adoption, emancipation, marriage or attainment of majority or as ordered by the court pursuant to this section.

3. Termination of appointment. The appointment of a guardian or conservator terminates upon the death, resignation or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the court. A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the minor or protected person.

4. Petition for removal or permission to resign. A minor, if 14 years of age or older, a parent of the minor or a person interested in the welfare of the minor may petition for removal of a guardian on the ground that removal would be in the best interest of the minor or for other good cause. A guardian may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian.

5. Appointment of additional or successor guardian. The court may appoint an additional guardian at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian

may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian becomes eligible to act on the occurrence of the vacancy or designated event or the filing of the acceptance of appointment, whichever last occurs. A successor guardian succeeds to the predecessor's powers.

6. Termination without consent; best interest; subsequent petitions. The court may not terminate the guardianship of a minor in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the minor. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the minor. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.

7. Parent's petition to terminate guardianship; burden of proof. A parent may bring a petition to terminate the guardianship of a minor. A parent's notification to the court of the revocation of prior consent for a guardianship must be considered a petition to terminate the guardianship. Before the court may apply the termination requirements in subsection 6, a party opposing a parent's petition to terminate a guardianship bears the burden of proving by a preponderance of the evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor, in accordance with the standard set forth in section 5-204, subsection 2, paragraph C. If the party opposing termination of the guardianship fails to meet its burden of proof on the question of the parent's fitness to regain custody, the court shall terminate the guardianship and make any further order that may be appropriate. In a contested action, the court may appoint counsel for the minor or for any indigent guardian or parent. In ruling on a petition to terminate a guardianship, the court may modify the terms of the guardianship or order transitional arrangements pursuant to section 5-211.

§5-211. Transitional arrangement for minors

In issuing, modifying or terminating an order of guardianship for a minor, the court may enter an order providing for transitional arrangements for the minor if the court determines that such arrangements will assist the minor with a transition of custody and are in the best interest of the minor. Orders providing for transitional arrangements may include, but are not limited to, rights of contact, housing, counseling or rehabilitation. In determining the best interest of the minor, a court may consider the minor's relationship with the guardian and need for stability.

§5-212. Appointment of guardian ad litem for minor

In any proceeding under this Part, including for issuing, modifying or terminating an order of guardianship for a minor, the court may appoint a guardian ad litem for the minor. The appointment may be made at any time, but the court shall make every effort to make the appointment as soon as possible after the commencement of the proceeding. The court shall follow the requirements of section 1-111 and other applicable law or court rules in making the appointment.

PART 3

GUARDIANSHIP OF ADULT

§5-301. Basis for appointment of guardian for adult

1. Appointment. On petition and after notice and hearing, the court may:

A. Appoint a guardian for a respondent who is an adult if it finds by clear and convincing evidence that the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because:

(1) The respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making;

(2) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives; and

(3) The appointment is necessary or desirable as a means of enabling the respondent to meet essential requirements for physical health, safety or self-care; or

B. With appropriate findings, treat the petition as one for a conservatorship under Part 4 or a protective arrangement instead of guardianship or conservatorship under Part 5, enter any other appropriate order or dismiss the proceeding.

2. Powers. The court shall grant to a guardian appointed under subsection 1 only those powers necessitated by the limitations and demonstrated needs of the respondent and enter orders that will encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship or other less restrictive alternatives would meet the needs of the respondent.

§5-302. Petition for appointment of guardian for adult

1. Petition for appointment. A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for the appointment of a guardian for the adult.

2. Contents of petition. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;

C. The name and current address of each of the following, if applicable:

(1) A person responsible for care of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian by the respondent;

(10) A person nominated as guardian by the respondent's parent, spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected; and

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

D. The reason a guardianship is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need;

(2) Any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented;

(3) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(4) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's alleged need;

E. Whether the petitioner seeks a limited guardianship or full guardianship;

F. If the petitioner seeks a full guardianship, the reason limited guardianship or a protective arrangement instead of guardianship is inappropriate;

G. If a limited guardianship is requested, the powers to be granted to the guardian;

H. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

I. If the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and

J. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings.

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any.

§5-303. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition under section 5-302 for appointment of a guardian for a respondent who is an adult, the court shall set a date, time and place for hearing the petition.

2. Notice to respondent. A copy of a petition under section 5-302 and notice of a hearing on the petition must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to other persons. In a proceeding on a petition under section 5-302, notice of the hearing also must be given to any person required to be listed in the petition under section 5-302, subsection 2, paragraphs A to C and any other person the court determines is entitled to notice. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

4. Notice of petition after appointment. Notice of a hearing on a petition that is filed after the appointment of a guardian and that seeks an order under this Part, together with a copy of the petition, must be given to the adult subject to guardianship, the guardian and any other person as the court determines.

§5-304. Appointment of visitor

1. Appointment of visitor. On receipt of a petition for appointment of a guardian for a respondent who is an adult under section 5-302, the court shall appoint a visitor. The visitor must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

2. Interview with respondent. A visitor appointed under subsection 1 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing and the general powers and duties of a guardian;

B. Determine the respondent's views about the appointment, including views about a proposed guardian, the guardian's proposed powers and duties and the scope and duration of the proposed guardianship;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.

3. Additional duties. In addition to the duties imposed by subsection 2, the visitor shall:

A. Interview the petitioner and proposed guardian, if any;

B. Visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made;

C. Obtain information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition; and

D. Investigate the allegations in the petition and any other matter relating to the petition as the court directs.

4. Report of visitor. A visitor under this section shall file a report in a record with the court at least 10 days before any hearing on the petition. The report must include:

A. Whether or not the respondent wishes to contest any aspect of the proceedings or to seek any limitation on the proposed guardian's powers;

B. A recommendation whether an attorney should be appointed to represent the respondent;

C. A summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance or supported decision making and cannot manage;

D. Recommendations regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's needs are available and, if a guardianship is recommended, whether it should be full or limited and, if a limited guardianship, the powers to be granted to the guardian;

E. A statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;

F. A statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;

G. A recommendation whether a further professional evaluation under section 5-306 is necessary;

H. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;

I. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

J. Any other matter as the court directs.

§5-305. Appointment and role of attorney for adult

1. Appointment of attorney required. The court shall appoint an attorney to represent the respondent in a proceeding on a petition under section 5-302 if:

A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed guardian's powers.

2. Duties of attorney. An attorney representing the respondent in a proceeding on a petition under section 5-302 shall:

A. Make reasonable efforts to ascertain the respondent's wishes;

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

§5-306. Professional evaluation

1. Evaluation; report. In every adult guardianship matter, the respondent must be examined by a licensed physician or psychologist who is acceptable to the court and who is qualified to evaluate the respondent's alleged cognitive and functional abilities. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before

any hearing on the petition. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

C. A prognosis for improvement and recommendation for the appropriate treatment, support or habilitation plan; and

D. The date of the examination on which the report is based.

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1.

§5-307. Attendance and rights at hearing

1. Attendance by respondent. Except as otherwise provided in subsection 2, a hearing under section 5-303 may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology.

2. Hearing without respondent in attendance. A hearing under section 5-303 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so; or

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance.

3. Assistance to respondent. The respondent may be assisted in a hearing under section 5-303 by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under section 5-303.

5. Rights of respondent at hearing. For or at a hearing under section 5-303, the respondent may:

A. Present evidence and subpoena witnesses and documents;

B. Examine witnesses, including any court-appointed evaluator and the visitor; and

C. Otherwise participate in the hearing.

6. Attendance by proposed guardian required.

Unless excused by the court for good cause, the proposed guardian shall attend a hearing under section 5-303.

7. Closed upon request; good cause. A hearing under section 5-303 must be closed on request of the respondent and a showing of good cause.

8. Participation; best interest of respondent.

Any person may request to participate in a hearing under section 5-303. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

§5-308. Confidentiality of records

1. Matter of public record; exception. The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the records after:

A. The respondent or individual subject to guardianship requests the records be sealed; and

B. Either:

(1) The petition for guardianship is dismissed; or

(2) The guardianship is terminated.

2. Access to court records. An adult subject of a proceeding for a guardianship, whether or not a guardian is appointed, any attorney designated by the adult and a person entitled to notice under section 5-310, subsection 5 are entitled to access court records of the proceeding and resulting guardianship, including a guardian's report or plan. In addition, a person for good cause may petition the court for access to court records of the guardianship, including an annual report or guardian's plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interest of the adult.

3. Reports confidential; availability. A report under section 5-304 of a visitor or a professional evaluation under section 5-306 is confidential and must be sealed on filing but is available to:

A. The court;

B. The individual who is the subject of the report or evaluation, without limitation as to use;

C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;

D. An agent appointed under a power of attorney for health care or advance health care directive, or power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and

E. Other persons when it is in the public interest or for a purpose the court orders for good cause.

§5-309. Who may be guardian of adult; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a guardian for an adult shall consider persons otherwise qualified in the following order of priority:

A. A guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction;

B. A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;

C. An agent appointed by the respondent under a power of attorney for health care or an advance health care directive;

D. A spouse or domestic partner of the respondent; and

E. A family member or other individual who has exhibited special care and concern for the respondent.

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential guardian's relationship with the respondent, the potential guardian's skills, the expressed wishes of the respondent, the extent to which the potential guardian and the respondent have similar values and preferences and the likelihood the potential guardian will be able to satisfy the duties of a guardian successfully.

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection 1 and appoint a person having a lower priority or no priority.

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

A. The individual is related to the respondent by blood, marriage or adoption; or

B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

5. Long-term care institution; exceptions. An owner, operator or employee of a long-term care institution at which the respondent is receiving care may not be appointed as guardian unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

§5-310. Order of appointment

1. Order contents. A court order appointing a guardian for an adult must clearly:

A. Include a finding that clear and convincing evidence has established that the identified needs of the respondent cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives, including use of appropriate supportive services, technological assistance or supported decision making;

B. Include a finding that clear and convincing evidence established that the respondent was given proper notice of the hearing on the petition;

C. State whether the adult subject to guardianship retains the right to vote and, if the adult does not retain the right to vote, include findings that support removing that right, which must include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process; and

D. State whether the adult subject to guardianship retains the right to marry and, if the adult's right to marry is subject to conditions or if the adult does not retain the right to marry, include findings that support the conditions on that right or the removal of that right.

2. Rights retained. An adult subject to guardianship retains the right to vote unless the order under subsection 1 includes the findings required by subsection 1, paragraph C. An adult subject to guardianship retains the right to marry unless the order under subsection 1 includes the findings required by subsection 1, paragraph D.

3. Basis for full guardianship. A court order establishing a full guardianship for an adult clearly must state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the adult subject to guardianship.

4. Limited guardianship; powers granted to guardian. A court order establishing a limited

guardianship for an adult must state clearly the powers granted to the guardian.

5. Notice; access to reports and plans. The court shall, as part of any order establishing a guardianship for an adult, identify any person that subsequently is entitled to:

A. Notice of the rights of the adult subject to guardianship;

B. Notice of a change in the primary dwelling of the adult subject to guardianship;

C. Notice that the guardian has delegated:

(1) The power to manage the care of the adult subject to guardianship;

(2) The power to make decisions about where the adult subject to guardianship lives;

(3) The power to make major medical decisions on behalf of the adult subject to guardianship;

(4) Any power that requires court approval under section 5-315; or

(5) Substantially all powers of the guardian.

D. Notice that the guardian will be unavailable to visit the adult subject to guardianship for more than 2 months or unable to perform the guardian's duties for more than one month;

E. A copy of the guardian's report and plan;

F. Access to court records pertaining to the guardianship;

G. Notice of the death or significant change in the condition of the adult subject to guardianship;

H. Notice that the court has limited or modified the powers of the guardian; and

I. Notice of the guardian's removal.

6. Entitled to notice; exceptions. A spouse, a domestic partner and the adult children of the adult subject to guardianship are entitled to notice under subsection 5 unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to guardianship or not in the best interest of the adult.

§5-311. Notice of order of appointment; rights

A guardian appointed under section 5-309 shall give to the adult subject to guardianship and to all other persons given notice under section 5-303 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

§5-312. Emergency guardian

1. Basis for emergency guardianship. On petition by a person interested in an adult's welfare or on its own after a petition has been filed under section 5-302, the court may appoint an emergency guardian for the adult if the court finds:

A. Appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety or welfare;

B. No other person appears to have authority and willingness to act in the circumstances; and

C. There is reason to believe that a basis for appointment of a guardian under section 5-301 may exist.

2. Limited time and powers. The duration of authority of an emergency guardian for an adult may not exceed 60 days and the emergency guardian may exercise only the powers specified in the order. The emergency guardian's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency guardian in subsection 1 continue.

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

(1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;

(2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and

(3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found.

B. Notice under paragraph A must include the following information:

(1) The temporary authority that the petitioner is requesting;

(2) The location and telephone number of the court in which the petition is being filed; and

(3) The name of the petitioner and the intended date of filing.

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection.

tion. The requirements of section 5-309 do not apply to this section.

D. Notice is not required under this subsection in the following circumstances:

(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice.

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

4. Appointment without notice and hearing.

The court may appoint an emergency guardian for an adult without notice and a hearing only if the court finds from an affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and any other person as the court determines of the appointment. If the respondent objects to the appointment, the court shall hold a hearing within 14 days of the appointment.

5. Not a determination. Appointment of an emergency guardian under this section is not a determination that the conditions required for appointment of a guardian under section 5-301 have been satisfied.

6. Removal; report; application. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires. In other respects, the provisions of this Act concerning guardians apply to an emergency guardian appointed under this section.

§5-313. Duties of guardian for adult

1. Fiduciary. A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care, education, health and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations.

2. Promote self-determination. A guardian for an adult shall promote the self-determination of the adult subject to guardianship and, to the extent reasonably feasible, encourage the adult to participate in

decisions, act on the adult's own behalf and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian shall:

A. Become or remain personally acquainted with the adult subject to guardianship and maintain sufficient contact with the adult, including through regular visitation, to know of the adult's abilities, limitations, needs, opportunities and physical and mental health;

B. To the extent reasonably feasible, identify the values and preferences of the adult subject to guardianship and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities and social interactions; and

C. Make reasonable efforts to identify and facilitate supportive relationships and services for the adult subject to guardianship.

3. Reasonable care, diligence and prudence. A guardian for an adult at all times shall exercise reasonable care, diligence and prudence when acting on behalf of or making decisions for the adult subject to guardianship. In furtherance of this duty, the guardian shall:

A. Take reasonable care of the personal effects, pets and service or support animals of the adult subject to guardianship and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the adult's property;

B. Expend money of the adult subject to guardianship that has been received by the guardian for the adult's current needs for support, care, education, health and welfare;

C. Administer assets of the adult subject to guardianship having a value of \$5,000 or less;

D. Conserve any excess money of the adult subject to guardianship for the adult's future needs, but if a conservator has been appointed for the adult, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the adult's future needs; and

E. Monitor the quality of services, including long-term care services, provided to the adult subject to guardianship.

4. Decision of the adult. In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to guardianship would make if able, the guardian shall consider the adult's prior or current directions, preferences, opin-

ions, values and actions, to the extent actually known or reasonably ascertainable by the guardian.

5. Decision in best interest of the adult. If a guardian for an adult cannot make a decision under subsection 4 because the guardian does not know and cannot reasonably determine the decision that the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accordance with the best interest of the adult. In determining the best interest of the adult, the guardian shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

B. Other information the guardian believes the adult would have considered if the adult were able to act; and

C. Other factors that a reasonable person in the circumstances of the adult would consider, including consequences for others.

6. Notice to court. A guardian for an adult immediately shall notify the court if the condition of the adult subject to guardianship has changed so that the adult is capable of exercising rights previously removed.

§5-314. Powers of guardian for adult

1. Powers. Except as otherwise limited by the court, a guardian for an adult may:

A. Apply for or receive money or benefits for the support of the adult, unless a conservator has been appointed for the adult and the application or receipt is within the powers of the conservator;

B. If otherwise consistent with an order by a court with jurisdiction relating to the dwelling of the adult, establish the adult's place of dwelling;

C. Consent to medical or other care, treatment or service for the adult;

D. If a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit;

E. To the extent reasonable, delegate to the adult certain responsibility for decisions affecting the adult's well-being; and

F. Receive personally identifiable health care information concerning the adult.

2. Adoption. The court may by specific order authorize a guardian for an adult to consent to the adoption of the adult.

3. Specific order of court required. The court may by specific order authorize a guardian for an adult to:

A. Consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed or made subject to conditions under section 5-310;

B. Petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage; or

C. Support or oppose a petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage.

4. Court's consideration. In determining whether to authorize a power under subsection 2 or 3, the court shall consider whether the underlying act would be in accordance with the adult's preferences, values and prior directions and whether the underlying act would be in the best interest of the adult.

5. Duties with respect to dwelling. In exercising the guardian's power under subsection 1, paragraph B to establish the dwelling of the adult subject to guardianship, a guardian shall:

A. Select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in section 5-313, subsections 4 and 5. If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship probably would choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall choose in accordance with section 5-313, subsection 5 a residential setting that is consistent with the best interest of the adult;

B. In selecting among residential settings, give priority to a residential setting that is in a location that will allow the adult subject to guardianship to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless doing so would be inconsistent with the decision-making standard in section 5-313, subsections 4 and 5;

C. Not later than 30 days after a change in the dwelling of the adult subject to guardianship, give notice of the change to the court, the adult subject to guardianship and any person identified as entitled to the notice in the court order appointing the guardian or a subsequent order. The notice must include the address and nature of the new dwelling and state whether the adult subject to guardi-

anship received advance notice of the change and whether the adult objected to the change;

D. Establish or move the permanent place of dwelling of an adult subject to guardianship to a nursing home, mental health facility or other facility that places restrictions on the individual's ability to leave or have visitors only if:

(1) The establishment or move is set forth in the guardian's plan;

(2) The court authorizes the establishment or move; or

(3) Notice of the establishment or move is given at least 14 days before the establishment or move to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order and no objection has been filed;

E. Establish or move the place of dwelling of an adult subject to guardianship outside this State only if consistent with the guardian's plan and authorized by the court by specific order; and

F. Take action that would result in the sale of or surrender the lease to the primary dwelling of the adult subject to guardianship only if:

(1) The action is specifically set forth in the guardian's plan;

(2) The court authorizes the action by specific order; or

(3) Notice of the action is given at least 14 days before the action to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order and no objection has been filed.

6. Duties with respect to health care. In exercising the guardian's power under subsection 1, paragraph C to make health care decisions, a guardian shall:

A. Involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health care options;

B. Defer to a decision by an agent under a power of attorney for health care or an advance health care directive executed by the adult and cooperate to the extent feasible with the agent making the decision; and

C. Take into account:

(1) The risks and benefits of treatment options; and

(2) The current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.

§5-315. Special limitations on guardian's power

1. Limitations; health care; finances. Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend a power of attorney for health care or an advance health care directive or power of attorney for finances executed by the adult. If a power of attorney for health care or an advance health care directive is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

2. Commitment to mental health facility. A guardian for an adult may not initiate the commitment of the adult to a mental health facility except in accordance with the State's procedure for involuntary civil commitment under Title 34-B, chapter 3, subchapter 4, article 3.

3. Restrictions on contact. A guardian for an adult may not restrict the ability of the adult to communicate, visit or interact with others, including receiving visitors or making or receiving telephone calls, personal mail or electronic communications, including through social media, or participating in social activities, unless:

- A. Authorized by the court by specific order;
- B. A protective order or a protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or
- C. The guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological or financial harm to the adult and the restriction is:
 - (1) For a period of not more than 7 business days if the person has a family or preexisting social relationship with the adult; or
 - (2) For a period of not more than 60 days if the person does not have a family or preexisting social relationship with the adult.

§5-316. Guardian's plan

1. Plan; revision. The petitioner for appointment of a guardian for an adult shall file with the petition a plan for the care of the adult. When there is a subsequent change in circumstances, or the guardian seeks

to deviate significantly from the plan previously filed, the guardian shall file with the court a revised plan for the care of the adult. The plan must be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the guardian. The plan must identify:

- A. The living arrangement, services and supports the guardian expects to arrange, facilitate or continue for the adult;
- B. Social and educational activities the guardian expects to facilitate on behalf of the adult;
- C. Any person with whom the adult has a relationship and any plan the guardian has for facilitating visits with the person;
- D. The anticipated nature and frequency of the guardian's visits and communication with the adult;
- E. Goals for the adult including any goal related to the restoration of the adult's rights and how the guardian anticipates achieving the goals;
- F. Whether the adult already has a plan in place and, if so, whether the guardian's plan is consistent with the adult's plan; and
- G. A statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

2. Notice of revised plan. A guardian shall give notice of the filing of a revised plan under subsection 1, along with a copy of the plan, to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and other persons as the court determines. The notice must include a statement of the right to object to the revised plan and be given not later than 14 days after the filing.

3. Objection to revised plan. An adult subject to guardianship and any person entitled under subsection 2 to receive notice and a copy of the guardian's plan may object to the revised plan.

4. Court review of plan or revised plan; approval. The court shall review a guardian's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or the revised plan the court shall consider an objection under subsection 3 and whether the plan or revised plan is consistent with the guardian's duties and powers under sections 5-313 and 5-314. The court may schedule a hearing on any revised plan submitted and may not approve any revised plan until 30 days after its filing.

5. Copy of approved plan. After a guardian's plan under this section is approved by the court, the guardian shall provide a copy of the plan to the adult

subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and other persons as the court determines.

§5-317. Guardian's report; monitoring of guardianship

1. Report; contents. A guardian for an adult at least annually shall submit to the court a report in a record regarding the condition of the adult and accounting for money and other property in the guardian's possession or subject to the guardian's control. Each report must state or contain:

A. The mental, physical and social condition of the adult;

B. The living arrangements of the adult during the reporting period;

C. A summary of the supported decision making, technological assistance, medical services, educational and vocational services and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

D. A summary of the guardian's visits with the adult, including the dates of the visits;

E. Action taken on behalf of the adult;

F. The extent to which the adult has participated in decision making;

G. If the adult is living in a mental health facility or living in a facility that provides the adult with health care or other personal services, whether the guardian considers the facility's current plan for support, care, treatment or habilitation consistent with the adult's preferences, values, prior directions and best interest;

H. Anything of more than de minimis value that the guardian, any individual who resides with the guardian or the spouse, domestic partner, parent, child or sibling of the guardian has received from an individual providing goods or services to the adult;

I. If the guardian has delegated powers to an agent, the powers delegated and the reason for the delegation;

J. Any business relation the guardian has with a person the guardian has paid or a person that has benefited from the property of the adult;

K. A copy of the guardian's most recent plan and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

L. Plans for future care and support;

M. A recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship; and

N. Whether any coguardian or successor guardian appointed to serve when a designated future event occurs is alive and able to serve.

2. Appointment of visitor. The court may appoint a visitor to review a report submitted under this section, interview the guardian or adult subject to guardianship or investigate any other matter involving the guardianship.

3. Notice of filing of report; copy. Notice of the filing of a guardian's report under this section, together with a copy of the report, must be given to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and any other person as the court determines. The notice and report must be given not later than 14 days after the filing of the report.

4. System to monitor reports. The court shall establish a system for monitoring reports submitted under this section and review each report at least annually to determine whether:

A. The report provides sufficient information to establish the guardian has complied with the guardian's duties;

B. The guardianship should continue; and

C. The guardian's requested fees, if any, should be approved.

5. Noncompliance; modification or termination. If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:

A. Shall notify the adult, the guardian and all persons entitled to notice under section 5-310, subsection 5 or a subsequent order;

B. May require additional information from the guardian;

C. May appoint a visitor to interview the adult or guardian or investigate any matter involving the guardianship; and

D. May consider removing the guardian under section 5-318 or terminating the guardianship or changing the powers of the guardian or other terms of the guardianship under section 5-319.

6. Fees not reasonable. If the court has reason to believe that fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

7. Approval of report. A guardian for an adult may petition the court for approval of a report filed

under this section. The court after review may approve the report. If, after notice and hearing, the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

§5-318. Removal of guardian for adult; appointment of successor

1. Removal; successor. The court may remove a guardian for an adult for failure to perform the guardian's duties or for other good cause and appoint a successor guardian to assume the duties of guardian.

2. Hearing. The court shall conduct a hearing to determine whether to remove a guardian for an adult and appoint a successor on:

A. Petition of the adult, the guardian or a person interested in the welfare of the adult that contains allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that removal of the guardian and appointment of a successor may be appropriate; or

C. Determination by the court that a hearing would be in the best interest of the adult.

3. Notice. Notice of a petition under subsection 2, paragraph A must be given to the adult subject to guardianship, the guardian and such other persons as the court determines.

4. Attorney for the adult. An adult subject to guardianship who seeks to remove the guardian and have a successor appointed has a right to choose an attorney to represent the adult. If the adult subject to guardianship is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

5. Procedure to select successor. In selecting a successor guardian of an adult subject to guardianship, the court shall follow the procedures under section 5-309.

6. Notice of appointment of successor. Not later than 30 days after appointing a successor guardian, the court shall give notice of the appointment to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order.

§5-319. Termination or modification of guardianship for adult

1. Petition for termination or modification. An adult subject to guardianship, the guardian for the adult or a person interested in the welfare of the adult may petition for:

A. Termination of the guardianship on the ground that a basis for appointment under section 5-301 does not exist or termination would be in the best interest of the adult, or for other good cause; or

B. Modification of the guardianship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

2. Hearing. The court shall conduct a hearing to determine whether termination or modification of a guardianship of an adult is appropriate on:

A. Petition under subsection 1 that contains allegations that, if true, would support a reasonable belief that termination or modification of the guardianship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because of a change in the functional needs of the adult or supports or services available to the adult;

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs of the adult or supports or services available to the adult have changed or a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the adult's needs are available; or

D. A determination by the court that a hearing would be in the best interest of the adult.

3. Notice. Notice of a petition under subsection 2, paragraph A must be given to the adult subject to guardianship, the guardian and such other persons as the court determines.

4. Termination. On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that the basis for appointment of a guardian under section 5-301 is satisfied.

5. Modification. The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the

abilities or limitations of the adult, the adult's supports or services or other circumstances.

6. Procedure. Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult that apply to a petition for guardianship.

7. Attorney for the adult. An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has a right to choose an attorney to represent the adult in this matter. If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

PART 4 **CONSERVATORSHIP**

§5-401. Basis for appointment of conservator

1. Conservator for minor; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of a minor, if the court finds by a preponderance of evidence that:

A. The minor owns money or property requiring management or protection that otherwise cannot be provided; or

B. Appointment of a conservator is in the best interest of the minor and:

(1) If the minor has a parent, the court gives weight to any recommendation of the minor's parent whether an appointment is in the best interest of the minor; and

(2) Either:

(a) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(b) Appointment is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

2. Conservator for adult; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of an adult if the court determines by clear and convincing evidence that:

A. The adult is unable to manage property or financial affairs because:

(1) Of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appro-

prate supportive services, technological assistance and supported decision making; or

(2) The adult is missing, detained or unable to return to the United States;

B. Appointment is necessary to:

(1) Avoid harm to the adult or significant dissipation of the property of the adult; or

(2) Obtain or provide money needed for the support, care, education, health or welfare of the adult, or of an individual entitled to the adult's support, and protection is necessary or desirable to obtain or provide money for the purpose; and

C. The respondent's identified needs cannot be met by less restrictive alternatives.

3. Powers. The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and enter orders that encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship or other less restrictive alternatives would meet the needs of the respondent.

§5-402. Petition for appointment of conservator

1. Petitioner. The following may petition for the appointment of a conservator:

A. The individual for whom the order is sought;

B. A person interested in the estate, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property and financial affairs of the individual; or

C. The guardian of the individual.

2. Contents. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before filing of the petition;

C. The name and current address of each of the following, if applicable:

(1) A person responsible for the care or custody of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for a respondent in this State or another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care or an advance health directive in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

(10) Any proposed conservator, including a person nominated by the respondent if the respondent is 14 years of age or older; and

(11) If the individual for whom a conservator is sought is a minor:

(a) An adult with whom the minor resides if not otherwise listed; and

(b) Any person not otherwise listed that had the care or custody of the minor for 60 or more days during the 2 years preceding the filing of the petition or any person that had the primary care or custody of the minor for at least 730 days

during the 5 years preceding the filing of the petition;

D. A general statement of the respondent's property with an estimate of its value, and the source and amount of other anticipated income or receipts;

E. The reason conservatorship is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need;

(2) If the petition alleges the respondent is missing, detained or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the respondent's whereabouts;

(3) Any protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's alleged need which have been considered or implemented;

(4) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(5) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's need;

F. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

G. Whether the petitioner seeks a limited conservatorship or a full conservatorship;

H. If the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;

I. If the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed; and

J. If the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any other requested limitation on the authority of the conservator.

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any.

§5-403. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition for appointment of a conservator under

section 5-402, the court shall set a date, time and place for hearing the petition.

2. Notice to respondent. A copy of a petition under section 5-402 and notice of a hearing on the petition must be served personally on the respondent at least 14 days before the hearing. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to others. In a proceeding on a petition under section 5-402, notice of the hearing also must be given to the persons required to be listed in the petition under section 5-402, subsection 3, paragraphs A to C and any other person interested in the respondent's welfare as the court determines at least 14 days prior to the hearing. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

4. Notice of petition after order. Notice of a hearing on a petition that is filed after the appointment of a conservator and that seeks an order under this Part, together with a copy of the petition, must be given to the individual subject to conservatorship if the individual is 14 years of age or older and is not missing, detained or unable to return to the United States, the conservator and any other person as the court determines.

§5-404. Petition for protective order

1. Petition. The person to be protected, any person who is interested in the estate, affairs or welfare of the person to be protected, including the parent, guardian, custodian or domestic partner of the person to be protected, or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for a protective order.

2. Contents of petition. A petition under subsection 1 must contain such information and be in such form as the Supreme Judicial Court by rule provides.

3. Purpose; priority scheduling. A petition for a protective order made under oath may be used to initiate court consideration, accounting and remediation of the actions of any individual responsible for the management of the property or affairs of another. In the case of an emergency, the petition must be given priority scheduling by the court.

A. The petition must include the following information and may include other information required by rule:

(1) Name, address and telephone number of the petitioner;

(2) Name, address and telephone number of the principal;

(3) Name, address and telephone number of the person with actual or apparent authority to manage the property or affairs of the principal;

(4) Facts concerning the extent and nature of the principal's inability to manage the principal's property or affairs effectively and any facts supporting an allegation that an emergency exists;

(5) Facts concerning the extent and nature of the actual or apparent agent's lack of management of the principal's property or affairs. If applicable, facts describing how the petitioner has already been adversely affected by the lack of management of the principal's property or affairs; and

(6) Names, addresses and relationships of all persons who are required to receive notice of the petition.

B. This subsection does not limit any other purpose for the use of a petition for a protective order or any other remedy available to the court.

§5-405. Appointment and role of visitor

1. Visitor for minor respondent. If the respondent in a proceeding to appoint a conservator is a minor, the court may appoint a visitor to investigate a matter related to the petition or to inform the minor or a parent of the minor about the petition or a related matter.

2. Visitor for adult respondent. If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a visitor unless the adult is represented by an attorney. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

3. Duties of visitor for adult respondent. A visitor appointed for an adult under subsection 2 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing and the general powers and duties of a conservator;

B. Determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties and the scope and duration of the proposed conservatorship;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.

4. Additional duties. In addition to the duties imposed by subsection 3, the visitor appointed for an adult under subsection 2 shall:

A. Interview the petitioner and proposed conservator, if any;

B. Review financial records of the respondent, if relevant to the visitor's recommendation under subsection 5, paragraph B;

C. State whether the respondent's needs could be met by a less restrictive alternative, including a protective arrangement instead of conservatorship and, if so, identify the less restrictive alternative; and

D. Investigate the allegations in the petition and any other matter relating to the petition as the court directs.

5. Report. A visitor appointed for an adult under subsection 2 shall file a report in a record with the court at least 10 days before any hearing on the petition. The report must include:

A. Whether or not the respondent wants to challenge any aspect of the proceeding or to seek any limitation on the conservator's powers;

B. A recommendation whether an attorney should be appointed to represent the respondent;

C. A recommendation:

(1) Regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's needs are available;

(2) If a conservatorship is recommended, whether it should be full or limited; and

(3) If a limited conservatorship is recommended, the powers to be granted to the conservator and the property that should be placed under the conservator's control;

D. A statement of the qualifications of the proposed conservator and whether the respondent ap-

proves or disapproves of the proposed conservator;

E. A recommendation whether a further professional evaluation under section 5-407 is necessary;

F. A statement whether the respondent is able to attend a hearing at the location court proceedings are typically conducted;

G. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

H. Any other matter as the court directs.

§5-406. Appointment and role of attorney

1. Attorney for respondent. The court shall appoint an attorney to represent a respondent in a proceeding on a petition under section 5-402 if:

A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed conservator's powers.

2. Duties of attorney. The attorney representing the respondent in a proceeding on a petition under section 5-402 shall:

A. Make reasonable efforts to ascertain the respondent's wishes;

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

3. Attorney for parent of minor. The court may appoint an attorney to represent a parent of a minor who is the subject of a proceeding on a petition under section 5-402 if:

A. The parent objects to appointment of a conservator;

B. The court determines that counsel is needed to ensure that consent to appointment of a conservator is informed; or

C. The court otherwise determines the parent needs representation.

§5-407. Professional evaluation

1. Evaluation; report. The respondent must be examined by a licensed physician or psychologist who is acceptable to the court, who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and who will not be advantaged or disadvantaged by a decision to grant the petition and does not otherwise have a conflict of interest. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations with regard to the management of the respondent's property and financial affairs;

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

C. A prognosis for improvement with regard to the ability to manage the respondent's property and financial affairs; and

D. The date of the examination on which the report is based.

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1.

§5-408. Attendance and rights at hearing

1. Attendance by respondent required. Except as otherwise provided in subsection 2, a hearing under section 5-403 may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology.

2. Hearing without respondent; findings. A hearing under section 5-403 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so;

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or

C. The respondent is a minor who has received proper notice and attendance would be harmful to the minor.

3. Assistance to respondent. The respondent may be assisted in a hearing under section 5-403 by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under section 5-403.

5. Rights of respondent at hearing. At a hearing under section 5-403, the respondent may:

A. Present evidence and subpoena witnesses and documents;

B. Examine witnesses, including any court-appointed evaluator and the visitor; and

C. Otherwise participate in the hearing.

6. Attendance by proposed conservator required. Unless excused by the court for good cause, the proposed conservator shall attend a hearing under section 5-403.

7. Closed upon request; good cause. A hearing under section 5-403 must be closed on request of the respondent and a showing of good cause.

8. Participation; best interest of respondent. Any person may request to participate in a hearing under section 5-403. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

§5-409. Confidentiality of records

1. Matter of public record; exceptions. The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

A. The respondent, the individual subject to conservatorship or the parent of a minor subject to conservatorship requests the record be sealed; and

B. Either:

(1) The petition for conservatorship is dismissed; or

(2) The conservatorship is terminated.

2. Access to records. An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the individual and a person entitled to notice under section 5-411 or a subsequent order are entitled to access court records of the proceeding and resulting conservatorship, including the conservator's plan and report. In addition, a person for good cause may petition the

court for access to court records of the conservatorship, including the conservator's plan and report. The court shall grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

3. Reports; availability. A report under section 5-405 of a visitor or professional evaluation under section 5-407 is confidential and must be sealed on filing but is available to:

- A. The court;
- B. The individual who is the subject of the report or evaluation, without limitation as to use;
- C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;
- D. An agent appointed under a power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and
- E. Other persons when it is in the public interest or for a purpose the court orders for good cause.

§5-410. Who may be conservator; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a conservator shall consider persons otherwise qualified in the following order of priority:

- A. A conservator, other than a temporary or emergency conservator, currently acting for the respondent in another jurisdiction;
- B. A person nominated as conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances;
- C. An agent appointed by the respondent to manage the respondent's property under a power of attorney for finances;
- D. A spouse or domestic partner of the respondent; and
- E. A family member or other individual who has exhibited special care and concern for the respondent.

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential conservator's relationship with the respondent, the potential conservator's skills, the expressed wishes of the respondent, the extent to which the potential conservator and the respondent have similar values and preferences and

the likelihood that the potential conservator will be able to satisfy the duties of a conservator successfully.

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person having priority under subsection 1 and appoint a person having a lower priority or no priority.

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as conservator unless:

- A. The individual is related to the respondent by blood, marriage or adoption; or
- B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

5. Long-term health care institution; exceptions. An owner, operator or employee of a long-term health care institution at which the respondent is receiving care may not be appointed as conservator unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

§5-411. Order of appointment

1. Conservator for minor; findings. A court order appointing a conservator for a minor must include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.

2. Conservator for adult; findings. A court order appointing a conservator for an adult must include a clear finding that:

- A. The identified needs of the respondent cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternatives, including use of appropriate supportive services, technological assistance or supported decision making; and
- B. Clear and convincing evidence established the respondent was given proper notice of the hearing on the petition.

3. Basis for full conservatorship. A court order establishing a full conservatorship for an adult clearly must state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.

4. Limited conservatorship; powers granted to conservator. A court order establishing a limited conservatorship must state clearly the property placed under the control of the conservator and the powers granted to the conservator.

5. Notice; access to reports and plans. The court shall, as part of an order establishing a conservatorship, identify any person that subsequently is entitled to:

A. Notice of the rights of the individual subject to conservatorship;

B. Notice of a sale of or surrender of a lease to the primary dwelling of the individual subject to conservatorship;

C. Notice that the conservator has delegated any power that requires court approval under section 5-414 or substantially all powers of the conservator;

D. Notice that the conservator will be unavailable to perform the conservator's duties for more than one month;

E. Copies of the conservator's plan and report;

F. Access to court records pertaining to the conservatorship;

G. A transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

H. Notice of the death or significant change in the condition of the individual subject to conservatorship;

I. Notice that the court has limited or modified the powers of the conservator; and

J. Notice of the conservator's removal.

6. Entitled to notice; exceptions. If an individual subject to conservatorship is an adult, the spouse, domestic partner and adult children of the adult subject to conservatorship are entitled under subsection 5 to notice unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to conservatorship or not in the best interest of the adult subject to conservatorship.

7. Notice when minor is subject to conservatorship. If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under subsection 5 to notice unless the court determines notice would not be in the best interest of the minor.

§5-412. Notice of order of appointment; rights

1. Notice of appointment, order; rights. A conservator appointed under section 5-401 shall give to the individual subject to conservatorship and to all other persons given notice under section 5-403 a copy

of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

2. Notice if person missing. If a conservator is appointed under section 5-401, subsection 2, paragraph A, subparagraph (2) and the individual subject to conservatorship is missing, notice under subsection 1 to the individual is not required.

§5-413. Emergency conservator

1. Appointment; findings. On petition by a person interested in an individual's welfare or on its own after a petition has been filed under section 5-402, the court may appoint an emergency conservator for the individual if the court finds:

A. Appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the respondent's property or financial interests;

B. No other person appears to have authority and willingness to act in the circumstances; and

C. There is reason to believe that a basis for appointment of a conservator under section 5-401 may exist.

2. Duration of emergency conservatorship. The duration of authority of an emergency conservator may not exceed 60 days and the emergency conservator may exercise only the powers specified in the order. The emergency conservator's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency conservator in subsection 1 continue.

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

(1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;

(2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and

(3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found.

B. Notice under paragraph A must include the following information:

(1) The temporary authority that the petitioner is requesting;

(2) The location and telephone number of the court in which the petition is being filed; and

(3) The name of the petitioner and the intended date of filing.

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-410 do not apply to this section.

D. Notice is not required under this subsection in the following circumstances:

(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice.

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

4. Appointment without notice and hearing.

The court may appoint an emergency conservator without notice and a hearing only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and other persons as the court determines of the appointment. If a person objects to the appointment, the court shall hold a hearing within 14 days.

5. Not a determination. Appointment of an emergency conservator under this section is not a determination that the conditions required for appointment of a conservator under section 5-401 have been satisfied.

6. Removal; report; application. The court may remove an emergency conservator appointed under this section at any time. The emergency conservator shall make any report the court requires. In other respects, the provisions of this Part concerning conservators apply to an emergency conservator appointed under this section.

§5-414. Powers of conservator requiring court approval

1. Powers requiring specific authorization; notice. Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under section 5-403, subsection 4 and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

A. Make gifts, except those of de minimis value;

B. Sell, encumber an interest in or surrender a lease to the primary dwelling of the individual subject to conservatorship;

C. Convey, release or disclaim contingent or expectant interests in property, including marital property and any right of survivorship incident to joint tenancy;

D. Exercise or release a power of appointment;

E. Create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual subject to conservatorship;

F. Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

G. Exercise a right to an elective share in the estate of a deceased spouse or domestic partner of the individual subject to conservatorship or to renounce or disclaim a property interest;

H. Grant a creditor a priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to conservatorship and preferential treatment otherwise would be impermissible under section 5-428, subsection 5; and

I. Make, modify, amend or revoke the will of the individual subject to conservatorship in compliance with the laws of the State governing executing wills.

2. Approval based on decision of individual. In approving a conservator's exercise of the powers listed in subsection 1, the court shall consider primarily the decision the individual subject to conservatorship would make if able, to the extent the decision can be ascertained.

3. To determine decision of individual. To determine under subsection 2 the decision the individual subject to conservatorship would make if able, the court shall consider the individual's prior or current directions, preferences, opinions, values and actions,

to the extent actually known or reasonably ascertainable. The court also shall consider:

- A. The financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship for support, and the interest of creditors;
- B. Possible reduction of income, estate, inheritance or other tax liabilities;
- C. Eligibility for governmental assistance;
- D. The previous pattern of giving or level of support provided by the individual subject to conservatorship;
- E. Any existing estate plan or lack of estate plan of the individual subject to conservatorship;
- F. The life expectancy of the individual subject to conservatorship and the probability that the conservatorship will terminate before the individual's death; and
- G. Any other relevant factors.

4. Power of attorney for finances. A conservator may not revoke or amend a power of attorney for finances executed by the individual subject to conservatorship. If a power of attorney for finances is in effect, a decision of the agent takes precedence over that of the conservator, unless there is a court order to the contrary.

§5-415. Petition for order subsequent to appointment

An individual subject to conservatorship or a person interested in the welfare of the individual may file a petition in the court for an order:

- 1. Bond or collateral.** Requiring the conservator to furnish bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished;
- 2. Accounting.** Requiring an accounting for the administration of the conservatorship estate;
- 3. Distribution.** Directing distribution;
- 4. Removal; temporary or successor.** Removing the conservator and appointing a temporary or successor conservator;
- 5. Modification.** Modifying the type of appointment or powers granted to the conservator, if the extent of protection or management previously granted is currently excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed;
- 6. Inventory, plan or report.** Rejecting or modifying the conservator's inventory, plan or report; or

7. Other relief. Granting other appropriate relief.

§5-416. Bond or alternative asset-protection arrangement

1. Bond or alternative asset-protection arrangement required. The court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. The court may not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service except as provided by subsection 3.

2. Amount of bond; collateral. Unless the court directs otherwise, the bond required under this section must be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

3. Bond not required. A regulated financial service institution qualified to do trust business in this State need not give a bond.

§5-417. Terms and requirements of bond

- 1. Bond requirements.** The following rules apply to the bond required under section 5-416.
 - A. Except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable.
 - B. By executing a bond provided by a conservator, a surety submits to the jurisdiction of the court that issued letters of office to the conservator in a proceeding pertaining to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the court records at the place where the bond is filed and any other address of the surety then known to the person required to provide the notice.
 - C. On petition of a successor conservator or any person affected by a breach of the obligation of the bond, a proceeding may be brought against a surety for breach of the obligation of the bond.
 - D. A proceeding against the bond may be brought until liability under the bond is exhausted.

2. Proceeding against surety. A proceeding may not be brought against a surety of a bond under this section on a matter as to which a proceeding against the conservator is barred.

3. Notice of nonrenewal. The surety or sureties of the bond must immediately serve notice to the court and to the individual under conservatorship if the bond is not renewed by the conservator.

§5-418. Duties of conservator

1. Duties as fiduciary. A conservator is a fiduciary and has a duty of prudence and duty of loyalty to the individual subject to conservatorship.

2. Promote self-determination. A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf and develop or regain the capacity to manage the individual's personal affairs.

3. Decision of individual. In making a decision on behalf of the individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current directions, preferences, opinions, values and actions to the extent actually known or reasonably ascertainable by the conservator.

4. Best interest of individual. If a conservator cannot make a decision under subsection 3 because the conservator does not know and cannot reasonably determine the decision that the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the conservator believes the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise would unreasonably harm or endanger the welfare of the individual, the conservator shall act in accordance with the best interest of the individual. In determining the best interest of the individual, the conservator shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;

B. Other information the conservator believes the individual would have considered if the individual were able to act; and

C. Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.

5. Prudent investor standard. Except when inconsistent with the conservator's duties under subsections 1 to 4, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:

A. The circumstances of the individual subject to conservatorship and the conservatorship estate;

B. General economic conditions;

C. The possible effect of inflation or deflation;

D. The expected tax consequences of an investment decision or strategy;

E. The role of each investment or course of action in relation to the conservatorship estate as a whole;

F. The expected total return from income and appreciation of capital;

G. The need for liquidity, regularity of income and preservation or appreciation of capital; and

H. The special relationship or value, if any, of specific property to the individual subject to conservatorship.

6. Propriety of investment and management.

The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

7. Reasonable effort to verify facts. A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

8. Special skills or expertise. A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

9. Consistent with estate plan and other instrument. In investing, selecting specific property for distribution and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative or other appointive instrument of the individual.

10. Insurance. A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or a court issues an order finding:

A. The property lacks sufficient equity; or

B. Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual subject to conservatorship.

11. Cooperation, power of attorney for finances. If a power of attorney for finances is in effect, a conservator shall cooperate with the agent to the extent feasible.

12. Digital assets. A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by court order.

13. Adult becomes capable. A conservator of an adult shall notify the court if the condition of the adult subject to conservatorship has changed so that the adult is capable of exercising rights previously removed immediately upon learning of the change.

§5-419. Conservator's plan

1. Plan; revision. The petitioner for appointment as conservator for an adult shall file with the petition a plan for protecting, managing, expending and distributing the assets of the conservatorship estate. When there is a change in circumstances or when the conservator seeks to deviate significantly from the conservator's plan previously filed, the conservator shall file with the court a revised plan for protecting, managing, expending and distributing the assets of the conservatorship estate. The plan must be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the conservator. The conservator shall include in the plan:

A. A budget setting forth projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual subject to conservatorship;

B. How the conservator will involve the individual subject to conservatorship in decisions about management of the conservatorship estate;

C. Any step the conservator plans to take to develop or restore the ability of the individual subject to conservatorship to manage the conservatorship estate; and

D. An estimate of the duration of the conservatorship.

2. Notice of revised plan. A conservator shall give notice of the filing of a revised plan under subsection 1, along with a copy of the revised plan, to the

individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must be given not later than 14 days after the filing.

3. Objection to revised plan. An individual subject to conservatorship and any person entitled under subsection 2 to receive notice and a copy of the conservator's revised plan may object to the revised plan.

4. Court review of plan or revised plan; approval. The court shall review a conservator's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or revised plan, the court shall consider any objection under subsection 3 and whether the plan or revised plan is consistent with the conservator's duties and powers. The court may not approve the plan or revised plan until 30 days after its filing.

5. Copy of approved plan. After a conservator's plan or revised plan under this section is approved by the court, the conservator shall provide a copy of the plan or revised plan to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines.

§5-420. Inventory; records

1. Inventory. Not later than 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

2. Notice of filing of inventory. A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must be given not later than 14 days after the filing.

3. Records. A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian of the individual or any person as the conservator or the court determines.

§5-421. Administrative powers of conservator not requiring court approval

1. Powers unless limited; powers of trustee. Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional powers granted to a trustee by law of this State other than this Part.

2. Powers of conservator. A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the appointment, without specific court authorization or confirmation, may:

A. Collect, hold and retain property included in the conservatorship estate, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;

B. Receive additions to the conservatorship estate;

C. Continue or participate in the operation of a business or other enterprise;

D. Acquire an undivided interest in property included in the conservatorship estate in which the conservator, in a fiduciary capacity, holds an undivided interest;

E. Invest assets of the conservatorship estate;

F. Deposit money of the conservatorship estate in a financial institution, including one operated by the conservator;

G. Acquire or dispose of property of the conservatorship estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of or abandon property included in the conservatorship estate;

H. Make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze existing or erect a new party wall or building;

I. Subdivide, develop or dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation, exchange or partition land by giving or receiving consideration and dedicate an easement to public use without consideration;

J. Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

K. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;

L. Grant an option involving disposition of property included in the conservatorship estate or accept or exercise an option for the acquisition of property;

M. Vote a security, in person or by general or limited proxy;

N. Pay a call, assessment or other sum chargeable or accruing against or on account of a security;

O. Sell or exercise a stock subscription or conversion right;

P. Consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

Q. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

R. Insure the conservatorship estate against damage or loss in accordance with section 5-418, subsection 10 and the conservator against liability with respect to a 3rd party;

S. Borrow money, with or without security, to be repaid from the conservatorship estate or otherwise;

T. Advance money for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate as against the individual subject to conservatorship for the advances;

U. Pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible;

V. Pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred in the collection, care, administration and protection of the conservatorship estate;

W. Pay a sum distributable to an individual subject to conservatorship or individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the distributee:

(1) To the guardian of the distributee;

(2) To a distributee's custodian under the Maine Uniform Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act of any state; or

(3) If there is no guardian, custodian or custodial trustee, to a relative or other person having physical custody of the distributee;

X. Prosecute or defend an action, claim or proceeding in any jurisdiction for the protection of

the conservatorship estate or of the conservator in the performance of the conservator's duties;

Y. Structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the individual's preferences, values and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and

Z. Execute and deliver any instrument that will accomplish or facilitate the exercise of a power vested in the conservator.

§5-422. Distribution from conservatorship estate

Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, and unless contrary to a conservator's plan filed under section 5-419, a conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with the following rules.

1. Appropriate standard. A conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health or welfare for the individual subject to conservatorship, or an individual who is in fact dependent on the individual subject to conservatorship, made by a guardian of the individual subject to conservatorship, if any, and, if the individual subject to conservatorship is a minor, a recommendation made by a guardian or parent of the minor.

2. Liability for distribution. A conservator acting in compliance with the conservator's duties under section 5-418 is not liable for a distribution made based on a recommendation under subsection 1 unless the conservator knows the distribution is not in the best interest of the individual subject to conservatorship.

3. Considerations for expenditure, distribution. In making an expenditure or distribution under this subsection, the conservator shall consider:

A. The size of the conservatorship estate, the estimated duration of the conservatorship and the likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate;

B. The accustomed standard of living of the individual subject to conservatorship and an individ-

ual who is in fact dependent on the individual subject to conservatorship;

C. Other money or source used for the support of the individual subject to conservatorship; and

D. The preferences, values and prior directions of the individual subject to conservatorship.

4. Compensation or reimbursement. Money expended or distributed under this subsection may be paid by the conservator to any person, including the individual subject to conservatorship, as reimbursement for expenditures the conservator might have made, or in advance for services to be rendered to the individual subject to conservatorship if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances.

§5-423. Conservator's report and accounting; monitoring

1. Report. A conservator shall file a report in a record with the court regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or removal, on termination of the conservatorship and at any other time as the court directs.

2. Contents. A report under subsection 1 must state or contain:

A. An accounting that contains a list of property included in the conservatorship estate and of the receipts, disbursements, liabilities and distributions during the period for which the report is made;

B. A list of the services provided to the individual subject to conservatorship;

C. A copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how and why the conservator has deviated;

D. Any recommended change in the conservatorship, including its scope and whether the conservatorship needs to continue;

E. Annual credit report of the individual subject to conservatorship and to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts and mortgages or other debts of the individual subject to conservatorship, along with, with all but the last 4 digits of the account numbers and the individual's social security number redacted;

F. Anything of more than de minimis value that the conservator, any individual who resides with the conservator or the spouse, domestic partner, parent, child or sibling of the conservator has re-

ceived from a person providing goods or services to the individual subject to conservatorship;

G. Any business relation the conservator has with a person providing goods or services to the individual subject to conservatorship;

H. Any business relation the conservator has with a person the conservator has paid or a person that has benefited from the property of the individual subject to conservatorship; and

I. Whether any coconservator or successor conservator appointed to serve when a designated future event occurs is alive and able to serve.

3. Visitor. The court may appoint a visitor to review a report under this section or conservator's plan under section 5-419, interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

4. Notice of report; copy. Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order, and a person the court determines is entitled to the report. Notwithstanding section 5-409, the credit report provided pursuant to subsection 2, paragraph E is confidential and may not be provided with the rest of the conservator's report except to the individual subject to conservatorship. The notice and report must be given not later than 14 days after filing.

5. Monitoring; frequency of report. The court shall establish procedures for monitoring a conservator's plan and report and review the plan and report not less than annually to determine whether:

A. The plan and report provide sufficient information to establish the conservator has complied with the conservator's duties;

B. The conservatorship should continue; and

C. The conservator's requested fees, if any, should be approved.

6. Noncompliance. If the court determines there is reason to believe the conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

A. Shall notify the conservator, the individual subject to conservatorship and all persons entitled to notice under section 5-411, subsection 5 or a subsequent order;

B. May require additional information from the conservator;

C. May appoint a visitor to interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs; and

D. May, consistent with sections 5-430 and 5-431, hold a hearing to consider removal of the conservator, termination of the conservatorship or a change in the powers granted to the conservator or terms of the conservatorship.

7. Unreasonable fees. If the court determines there is reason to believe a conservator's requested fees are not reasonable, the court shall hold a hearing to adjust the fees.

8. Approval of report or accounting. A conservator may petition the court for approval of a report or accounting filed under this section. The court after review may approve the report or accounting. An order, after notice and hearing, approving a final report or accounting discharges the conservator from all liabilities, claims and causes of action by a person given notice of the report or accounting and the hearing as to a matter adequately disclosed in the report or accounting.

§5-424. Attempted transfer of property by individual subject to conservatorship

1. Interest not transferable or assignable; not subject to claims. The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferable or assignable by the individual and is not subject to levy, garnishment or similar process for claims against the individual unless allowed under section 5-428.

2. Contract void against individual and property. If an individual subject to conservatorship enters into a contract after having the right to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.

3. Protection of 3rd parties. A 3rd party that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of this State other than this Act.

§5-425. Transaction involving conflict of interest

A transaction involving a conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by the court by specific order after notice to all persons entitled to notice under section 5-411, subsection 5 or a subsequent order. A transaction affected by a substantial conflict between fiduciary duties and personal interests includes a sale, encumbrance or other transaction involving the conservatorship estate entered into

by the conservator, an individual with whom the conservator resides, the spouse, domestic partner, descendant, sibling, agent or attorney of the conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

§5-426. Protection of person dealing with conservator

1. Protection of 3rd party. A person that assists or deals with a conservator in good faith and for value in any transaction, other than one requiring a court order under section 5-414, is protected as though the conservator properly exercised the power in question. Knowledge by a person that the person is dealing with a conservator does not alone require the person to inquire into the existence of the authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority that are stated in letters of office, or as otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.

2. Application of protection. Protection under subsection 1 extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and is not a substitute for protection provided to a person that assists or deals with a conservator by comparable provisions in law of this State other than this Act relating to commercial transactions or simplifying transfers of securities by fiduciaries.

§5-427. Death of individual subject to conservatorship

1. Delivery of will. If an individual subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual in the conservator's possession and inform the personal representative named in the will if feasible, or if not feasible a beneficiary named in the will, of the delivery.

2. Powers and duties of personal representative; notice. If 40 days after the death of an individual subject to conservatorship no personal representative has been appointed and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The conservator shall give notice to a person nominated as personal representative by a will of the decedent of which the conservator is aware and to all of the decedent's heirs and all devisees of the will, if any. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator has acquired the powers and duties of a personal representative.

3. Effect of appointment as personal representative. Issuance of an order under this section has the effect of an order of appointment of a personal representative under section 3-308 and Article 3, Parts 6 to 10.

4. Distribution; discharge. On the death of an individual subject to conservatorship, the conservator shall conclude the administration of the conservatorship estate by distributing property subject to conservatorship to the individual's successors. Not later than 30 days after distribution, the conservator shall file a final report and petition for discharge.

§5-428. Presentation and allowance of claim

1. Claims against estate or protected person. A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the individual subject to conservatorship arising before or during the conservatorship on presentation and allowance in accordance with the priorities under subsection 4. A claimant may present a claim by:

A. Sending or delivering to the conservator a statement in a record of the claim, indicating its basis, the name and address of the claimant and the amount claimed; or

B. Filing with the court a record of the claim, in a form acceptable to the court, and sending or delivering a copy of the statement to the conservator.

2. Presented claim; allowance; disallowance. A claim under subsection 1 is presented on receipt by the conservator of the statement of claim by the conservator or the filing with the court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed by the conservator in a record sent or delivered to the claimant not later than 60 days after its presentation. Before payment the conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a claim tolls the running of a statute of limitations that has not expired relating to the claim until 30 days after its disallowance.

3. Unpaid claim. A claimant whose claim under subsection 1 has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

4. Distribution; order. If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

- A. Costs and expenses of administration;
- B. A claim of the Federal Government or State Government having priority under law other than this Act;
- C. A claim incurred by the conservator for support, care, education, health or welfare previously provided to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship;
- D. A claim arising before the conservatorship; and
- E. All other claims.

5. Preference of claims. Preference may not be given in the payment of a claim under subsection 4 over another claim of the same class. A claim due and payable may not be preferred over a claim not due unless:

- A. Doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health care expenses of the individual subject to conservatorship; and
- B. The court authorizes the preference under section 5-414, subsection 1, paragraph H.

6. Security interest in conservatorship estate. If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the individual subject to conservatorship, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date.

§5-429. Personal liability of conservator

1. Not personally liable. Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the conservator fails to reveal in the contract or before entering into the contract the conservator's representative capacity.

2. Personally liable. A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.

3. Claims asserted against conservator. A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate

or a claim based on a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

4. Determination of liability. A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge or indemnification or another appropriate proceeding or action.

§5-430. Removal of conservator; appointment of successor

1. Removal by court. The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

2. Hearing upon petition, communication or determination. The court shall conduct a hearing to determine whether to remove a conservator and appoint a successor on:

A. Petition of the individual subject to conservatorship, conservator or person interested in the welfare of the individual that contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the individual subject to conservatorship, conservator or person interested in the welfare of the individual that supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

C. Determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.

3. Notice of petition. Notice of a petition under subsection 2, paragraph A must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

4. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to remove the conservator and have a successor appointed is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-406. The court shall award reasonable attorney's fees to the attorney for the individual as provided in section 5-119.

5. Selection of successor conservator. In selecting a successor conservator, the court shall follow the procedures under section 5-410.

6. Notice of appointment of successor conservator. Not later than 30 days after appointing a successor conservator, the court shall give notice of the appointment to the individual subject to conservatorship and all persons entitled to the notice under section 5-411, subsection 5 or a subsequent order.

§5-431. Termination or modification of conservatorship

1. Conservatorship for a minor. A conservatorship for a minor terminates on the earlier of:

- A. An order of the court;
- B. The minor becoming an adult or, if the minor consents or the court finds by clear and convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining 21 years of age;
- C. Emancipation of the minor; and
- D. Death of the minor.

2. Conservatorship for an adult. A conservatorship for an adult terminates on order of the court or when the adult dies.

3. Petition for termination or modification. An individual subject to conservatorship, the conservator or a person interested in the welfare of the individual may petition for:

- A. Termination of the conservatorship on the ground that a basis for appointment under section 5-401 does not exist or termination would be in the best interest of the individual, or for other good cause; or
- B. Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

4. Hearing. The court shall conduct a hearing to determine whether termination or modification of a conservatorship is appropriate on:

- A. Petition under subsection 3 that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;
- B. A communication from the individual subject to conservatorship, the conservator or a person interested in the welfare of the individual that supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because of a change in the functional needs of the individual or in the supports or services available to the individual;

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual subject to conservatorship have changed or a protective arrangement of conservatorship or other less restrictive alternatives are available; or

D. A determination by the court that a hearing would be in the best interest of the individual.

5. Notice of petition. Notice of a petition under subsection 3 must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

6. Termination. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless a basis for appointment of a conservator under section 5-401 is satisfied.

7. Modification. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.

8. Safeguard rights of individual. Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.

9. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship is not represented by an attorney, the court shall appoint an attorney under the same conditions in section 5-406. The court shall award reasonable attorney's fees to the individual's attorney as provided in section 5-119.

10. Property; report; petition for discharge. On termination of a conservatorship and whether or not formally distributed by the conservator, property of the conservatorship estate passes to the individual formerly subject to conservatorship or the individual's heirs, successors or assigns. The order of termination must provide for expenses of administration and direct the conservator to file a final report and petition for discharge on approval of the final report.

11. Discharge. The court shall enter a final order of discharge on the approval of the final report and satisfaction by the conservator of any other condition placed by the court on the conservator's discharge.

12. Distribution. On the death of an individual subject to conservatorship or other event terminating or partially terminating the conservatorship, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual or other per-

sons entitled to it. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be effected.

PART 5

OTHER PROTECTIVE ARRANGEMENTS

§5-501. Authority for protective arrangements

1. Order protective arrangement. Under this Part, a court:

A. Upon receiving a petition for a guardianship for an adult may order one or more protective arrangements instead of guardianship as a less restrictive alternative to guardianship; and

B. Upon receiving a petition for a conservatorship for an individual may order one or more protective arrangements instead of conservatorship as a less restrictive alternative to conservatorship.

2. Protective arrangement instead of guardianship. A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this Part for one or more protective arrangements instead of guardianship.

3. Protective arrangement instead of conservatorship. The following persons may petition under this Part for one or more protective arrangements instead of conservatorship:

A. The individual for whom the protective arrangements are sought;

B. A person interested in the property, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; and

C. The guardian of the individual.

§5-502. Basis for protective arrangements instead of guardianship for adult

1. Findings. After the hearing conducted on a petition for guardianship under section 5-302 or one or more protective arrangements instead of guardianship under section 5-501, subsection 1, the court may enter an order for one or more protective arrangements instead of guardianship under subsection 2 if the court finds by clear and convincing evidence that:

A. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making; and

B. The respondent's identified needs cannot be met by less restrictive alternatives.

2. Orders other than guardianship. If the court makes the findings under subsection 1, the court, instead of appointing a guardian, may:

A. Authorize or direct one or more transactions necessary to meet the respondent's need for health, safety or care, including but not limited to:

(1) One or more particular medical treatments or refusals of particular medical treatments;

(2) A move to a specified place of dwelling; or

(3) Visitation or supervised visitation between the respondent and another person;

B. Restrict access to the respondent by a person whose access places the respondent at serious risk of physical or psychological harm; and

C. Order other arrangements on a limited basis that are appropriate.

3. Factors. In deciding whether to enter an order under this section, the court shall consider the factors under sections 5-313 and 5-314 that a guardian must consider when making a decision on behalf of an adult subject to guardianship.

§5-503. Basis for protective arrangements instead of conservatorship for adult or minor

1. Findings. After the hearing conducted on a petition for conservatorship for an adult under section 5-402 or one or more protective arrangements instead of conservatorship for an adult under section 5-501, subsection 3, the court may enter an order for one or more protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds:

A. By clear and convincing evidence that the respondent is unable to manage property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making, or the adult is missing, detained or unable to return to the United States;

B. By a preponderance of the evidence that:

(1) The respondent has property likely to be wasted or dissipated unless management is provided; or

(2) The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the adult or an individual who is entitled to the respondent's support and protection; and

C. The respondent's identified needs cannot be met by less restrictive alternatives.

2. Protective arrangements for minors. After the hearing conducted on a petition for conservatorship for a minor under section 5-402 or a protective arrangement instead of conservatorship for a minor under section 5-501, subsection 3, the court may enter an order for a protective arrangement or protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds by a preponderance of the evidence that the minor owns money or property requiring management or protection that cannot be provided otherwise and:

A. The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

B. The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

3. Orders other than conservatorship. If the court makes the findings under subsection 1 or 2, the court, instead of appointing a conservator, may:

A. Authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including but not limited to:

- (1) An action to establish eligibility for benefits;
- (2) Payment, delivery, deposit or retention of funds or property;
- (3) Sale, mortgage, lease or other transfer of property;
- (4) Purchase of an annuity;
- (5) Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;
- (6) Addition to or establishment of a trust;
- (7) Ratification or invalidation of a contract, trust, will or other transaction, including a transaction related to the property or business affairs of the respondent; or
- (8) Settlement of a claim; or

B. Restrict access to the respondent's property by a person whose access to the property places the respondent at serious risk of financial harm.

4. Order to restrict access. If, after the hearing conducted under section 5-505 on a petition under section 5-501, subsection 1, paragraph B or section 5-501, subsection 3, a court may enter an order to restrict access to the respondent or the respondent's

property by a person that the court finds by clear and convincing evidence:

A. Through fraud, coercion, duress or the use of deception and control, caused or attempted to cause an action that would have resulted in financial harm to the respondent or the respondent's property; and

B. Poses a serious risk of substantial financial harm to the respondent or the respondent's property.

5. Factors. In deciding whether to enter an order under subsection 3 or 4, the court shall consider the factors under section 5-418 a conservator must consider when making a decision on behalf of an individual subject to conservatorship.

6. Minors; factors. In deciding whether to enter an order under subsection 3 or 4 for a respondent who is a minor, the court also shall consider the best interest of the respondent, the preference of the parents of the respondent and the preference of the respondent if the minor is 14 years of age or older.

§5-504. Petition

1. Petition contents. A petition for one or more protective arrangements instead of guardianship or conservatorship must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the protective arrangements and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;

C. The name and current address of each of the following, if applicable:

(1) A person responsible for care or custody of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian or conservator by the respondent;

(10) A person nominated as guardian by the respondent's parent or spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected;

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition; and

(13) If the respondent is a minor:

(a) An adult with whom the respondent resides if not otherwise listed; and

(b) Any person not otherwise listed that had primary care or custody of the respondent for 60 or more days during the 2 years immediately preceding the filing of the petition or any person that had primary care or custody of the respondent for at least 730 days during the 5 years immediately preceding the filing of the petition;

D. The nature of the protective arrangement or protective arrangements sought;

E. The reason a protective arrangement sought is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need;

(2) Any less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented and, if there are none, the reason they have not been considered or implemented; and

(3) The reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;

F. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

G. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

H. If one or more protective arrangements instead of conservatorship are sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

I. If one or more protective arrangements instead of guardianship are sought and the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

2. Attorney for petitioner. A petition under subsection 1 must state the name and address of an attorney representing the petitioner, if any.

§5-505. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition under section 5-501, the court shall set a date, time and place for hearing on the petition.

2. Notice to respondent. A copy of a petition under section 5-501 and notice of the hearing under subsection 1 must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to others. In a hearing under subsection 1, notice of the hearing also must be given to the persons listed in the petition and any other person interested in the respondent's welfare as the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

4. Notice of petition after order. Notice of a hearing on a petition filed under this Act after the

court has ordered a protective arrangement or protective arrangements under this Part, together with a copy of the petition, must be given to the respondent and any other person as the court determines.

§5-506. Appointment of visitor

1. Petition for protective arrangement. On receipt of a petition for one or more protective arrangements instead of guardianship under section 5-501, the court shall appoint a visitor. A visitor appointed under this subsection must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

2. Protective order for minor. On receipt of a petition for a protective order instead of conservatorship for a minor under section 5-501, the court may appoint a visitor to investigate a matter related to the petition or to inform the respondent or a parent of the respondent about the petition or a related matter.

3. Protective order for adult. On receipt of a petition for a protective order instead of conservatorship for an adult under section 5-501, the court shall appoint a visitor unless the respondent is represented by an attorney.

4. Visitor's duties. A visitor appointed under subsection 1 or 3 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, and the respondent's rights at the hearing;

B. Determine the respondent's views with respect to the order sought;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney;

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets;

E. If the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;

F. If one or more protective arrangements instead of guardianship are sought, obtain information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition;

G. If one or more protective arrangements instead of conservatorship are sought, review financial records of the respondent if relevant to the visi-

tor's recommendation under subsection 5, paragraph C; and

H. Investigate the allegations in the petition and any other matter relating to the petition as the court directs.

5. Report. A visitor under this section promptly shall file a report in a record with the court, which must include:

A. A recommendation whether an attorney should be appointed to represent the respondent;

B. To the extent relevant to the order sought, a summary of self-care, independent living tasks and financial management tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance or supported decision making and cannot manage;

C. Recommendations regarding the appropriateness of the protective arrangement sought and whether less restrictive alternatives for meeting the respondent's needs are available;

D. If the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;

E. A recommendation whether a professional evaluation under section 5-508 is necessary;

F. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;

G. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

H. Any other matter as the court directs.

§5-507. Appointment and role of attorney

1. Appointment of attorney. The court shall appoint an attorney to represent the respondent in a proceeding under this Part if:

A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitations on the protective arrangement.

2. Attorney's duties. An attorney representing the respondent in a proceeding under this Part shall:

- A. Make reasonable efforts to ascertain the respondent's wishes;
- B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and
- C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

3. Attorney for parent of minor. The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under this Part if:

- A. The parent objects to the entry of an order for a protective arrangement or protective arrangements instead of guardianship or conservatorship;
- B. The court determines that counsel is needed to ensure that consent to the entry of an order for one or more protective arrangements is informed; or
- C. The court otherwise determines the parent needs representation.

§5-508. Professional evaluation

1. Order professional evaluation. At or before a hearing on a petition under this Part for a protective arrangement, the court shall order a professional evaluation of the respondent:

- A. If the respondent requests the evaluation; or
- B. Unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation.

2. Examination; report. If the court orders an evaluation under subsection 1, the respondent must be examined by a licensed physician or psychologist approved by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report must contain:

- A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;
- B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;
- C. A prognosis for improvement, including with regard to the ability to manage the respondent's property and financial affairs if a limitation in that ability is alleged, and recommendation for the ap-

propriate treatment, support or habilitation plan; and

D. The date of the examination on which the report is based.

3. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1.

§5-509. Attendance and rights at hearing

1. Attendance by respondent required. Except as otherwise provided in subsection 2, a hearing under this Part may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology.

2. Hearing without respondent; findings. A hearing under this Part may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

- A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so;
- B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance;
- C. The respondent is represented by an attorney and the attorney represents that the respondent does not want to attend the hearing;
- D. The visitor has confirmed with the respondent that the respondent has no objection to the protective arrangements and that the respondent does not wish to attend the hearing; or
- E. The respondent is a minor who has received proper notice and attendance would be harmful to the minor.

3. Assistance to respondent. The respondent may be assisted in a hearing under this Part by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under this Part.

5. Rights of respondent at hearing. At a hearing under this Part, the respondent may:

A. Present evidence and subpoena witnesses and documents;

B. Examine witnesses, including any court-appointed evaluator and the visitor; and

C. Otherwise participate in the hearing.

6. Closed upon request; good cause. A hearing under this Part must be closed on request of the respondent and a showing of good cause.

7. Participation; best interest of respondent. Any person may request to participate in a hearing under this Part. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

§5-510. Notice of order

The court shall give notice of an order under this Part to the individual who is the subject of the protective arrangements instead of guardianship or conservatorship, a person whose access to the respondent is restricted by the order and any other person as the court determines.

§5-511. Confidentiality of records

1. Matter of public record; exceptions. The existence of a proceeding for or the existence of one or more protective arrangements instead of a guardianship or conservatorship is a matter of public record unless the court seals the record after:

A. The respondent, the individual subject to the protective arrangements or the parent of a minor subject to the protective arrangements requests the record be sealed; and

B. Either:

(1) The proceeding is dismissed;

(2) The protective arrangement is no longer in effect; or

(3) Any act authorized by the order granting the protective arrangement has been completed.

2. Access to records. A respondent, an individual subject to a proceeding for one or more protective arrangements instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to one or more protective arrangements and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangements or furthers the public interest

and does not endanger the welfare or financial interests of the respondent or individual.

3. Reports sealed; availability. A report of a visitor or professional evaluation generated in the course of a proceeding under this Part must be sealed on filing but is available to:

A. The court;

B. The individual who is the subject of the report or evaluation, without limitation as to use;

C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;

D. Unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal;

E. If the order is for one or more protective arrangements instead of guardianship and unless the court directs otherwise, an agent appointed under a power of attorney for health care in which the respondent is identified as the principal; and

F. Other persons when it is in the public interest or for a purpose the court orders for good cause.

PART 6

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

SUBPART 1

GENERAL PROVISIONS

§5-601. Short title

This Part may be known and cited as "the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

§5-602. Definitions

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

1. Adult. "Adult" means an individual who has attained 18 years of age.

2. Conservator. "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Part 4.

3. Guardian. "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Part 3.

4. Guardianship proceeding. "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

5. Individual subject to guardianship. "Individual subject to guardianship" means an adult for whom a guardian has been appointed.

6. Party. "Party" means an interested person within the meaning of section 1-201, subsection 26, including the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.

7. Person. "Person," except in the term "protected person," means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; public corporation; government or governmental subdivision, agency or instrumentality; or any other legal or commercial entity.

8. Protected person. "Protected person" means an adult for whom a protective order has been issued.

9. Protective order. "Protective order" means an order appointing a conservator or other order related to management or disposition of an adult's property.

10. Protective proceeding. "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

11. Respondent. "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

§5-603. International application of Part

A court of this State may treat a foreign country as if it were a state for the purpose of applying this Part.

§5-604. Communication between courts

1. Communication between courts; participation; record. A court of this State may communicate with a court in another state concerning a proceeding arising under this Part. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

2. No record required. Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

§5-605. Cooperation between courts

1. Request of court of another state. In a guardianship proceeding or protective proceeding in this State, a court of this State may request the appropriate court of another state to do any of the following:

A. Hold an evidentiary hearing;

B. Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

C. Order that an evaluation or assessment be made of the respondent;

D. Order any appropriate investigation of a person involved in a proceeding;

E. Forward to the court a certified copy of the transcript or other record of a hearing under paragraph A or any other proceeding, any evidence otherwise produced under paragraph B and any evaluation or assessment prepared in compliance with an order under paragraph C or D;

F. Issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the individual subject to guardianship or protected person; and

G. Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 Code of Federal Regulations, Section 160.103, as amended.

2. Jurisdiction to comply with request. If a court of another state in which a guardianship proceeding or protective proceeding is pending requests assistance of the kind provided in subsection 1, a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

§5-606. Taking testimony in another state

1. Testimony of witness in another state. In a guardianship proceeding or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

2. Deposition or testimony by electronic means. In a guardianship proceeding or protective proceeding, a court in this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this State shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

3. Documentary evidence transmitted, no original writing. Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

SUBPART 2
JURISDICTION

§5-621. Definitions; significant-connection factors

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

A. "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety or welfare and for which the appointment of a guardian is necessary.

B. "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian or, if the respondent was not physically present in a single state for the 6 months immediately preceding the filing of the petition, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition.

C. "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

2. Significant-connection factors. In determining under section 5-623 and section 5-631, subsection 5 whether a respondent has a significant connection with a particular state, the court shall consider:

A. The location of the respondent's family and other persons required to be notified of the guardianship proceeding or protective proceeding;

B. The length of time the respondent at any time was physically present in the state and the duration of any absence;

C. The location of the respondent's property; and

D. The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services.

§5-622. Exclusive basis

This subpart provides the exclusive jurisdictional basis for a court of this State to appoint a guardian or issue a protective order for an adult.

§5-623. Jurisdiction

A court of this State has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

1. Respondent's home state. This State is the respondent's home state; or

2. Significant-connection state and other factors. On the date the petition is filed, this State is a significant-connection state and:

A. The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this State is a more appropriate forum;

B. The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and, before the court makes the appointment or issues the order:

(1) A petition for an appointment or order is not filed in the respondent's home state;

(2) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(3) The court in this State concludes that it is an appropriate forum under the factors set forth in section 5-626;

C. This State does not have jurisdiction under either paragraph A or B, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum and jurisdiction in this State is consistent with the Constitution of Maine and the United States Constitution; or

D. The requirements for special jurisdiction under section 5-624 are met.

§5-624. Special jurisdiction

1. Special jurisdiction. If this State is not the respondent's home state and not a significant-connection state, a court of this State has special jurisdiction to do any of the following:

A. Appoint a guardian in an emergency for a term not exceeding 6 months for a respondent who is physically present in this State;

B. Issue a protective order with respect to real or tangible personal property located in this State; or

C. Appoint a guardian or conservator for an individual subject to guardianship or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to those in section 5-631.

2. Emergency appointment. If a petition for the appointment of a guardian in an emergency is brought in this State and this State was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court

of the home state, if any, whether dismissal is requested before or after the emergency appointment.

§5-625. Exclusive and continuing jurisdiction

Except as otherwise provided in section 5-624, a court that has appointed a guardian or issued a protective order consistent with this Part has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

§5-626. Appropriate forum

1. Decline jurisdiction. A court of this State having jurisdiction under section 5-623 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

2. Actions by court that declines jurisdiction. If a court of this State declines to exercise its jurisdiction under subsection 1, it shall either:

- A. Dismiss or stay the proceeding; or
- B. Impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

3. Appropriate forum factors. In determining whether it is an appropriate forum, the court shall consider all relevant factors, which may include:

- A. Any expressed preference of the respondent;
- B. Whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;
- C. The length of time the respondent was physically present in or was a legal resident of this State or another state;
- D. The distance of the respondent from the court in each state;
- E. The financial circumstances of the respondent's estate;
- F. The nature and location of the evidence;
- G. The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- H. The familiarity of the court of each state with the facts and issues in the proceeding; and
- I. If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

§5-627. Jurisdiction declined by reason of conduct

1. Jurisdiction because of unjustifiable conduct. If at any time a court of this State determines

that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- A. Decline to exercise jurisdiction;
- B. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
- C. Continue to exercise jurisdiction after considering:

- (1) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
- (2) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 5-626, subsection 3; and
- (3) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 5-623.

2. Assessment of expenses. If a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this State or a governmental subdivision, agency or instrumentality of this State unless authorized by law other than this Part.

§5-628. Notice of proceeding

If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this State.

§5-629. Proceedings in more than one state

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this State under

section 5-624, subsection 1, paragraph A or B, if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following apply.

1. Jurisdiction proper; proceed with case. If the court in this State has jurisdiction under section 5-623, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 5-623 before the appointment or issuance of the order.

2. Lack of jurisdiction; communication with court. If the court in this State does not have jurisdiction under section 5-623, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum.

SUBPART 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

§5-631. Transfer of guardianship or conservatorship to another state

1. Petition. A guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state.

2. Notice. Notice of a petition under subsection 1 must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.

3. Hearing or opportunity for hearing. On the court's own motion or on request of the guardian or conservator, the individual subject to guardianship or protected person or other person required to be notified of the petition, the court shall hold a hearing or provide an opportunity for a hearing to be held on a petition filed pursuant to subsection 1.

4. Provisional order; guardianship. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

A. The individual subject to guardianship is physically present in or is reasonably expected to move permanently to the other state;

B. An objection to the transfer has not been made or, if an objection has been made, the objector has not established by a preponderance of the evidence that the transfer would be contrary to the

best interest of the individual subject to guardianship; and

C. Plans for care and services for the individual subject to guardianship in the other state are reasonable and sufficient.

5. Provisional order; conservatorship. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

A. The protected person is physically present in or is reasonably expected to move permanently to the other state or the protected person has a significant connection to the other state considering the factors in section 5-621, subsection 2;

B. An objection to the transfer has not been made or, if an objection has been made, the objector has not established by a preponderance of the evidence that the transfer would be contrary to the best interest of the protected person; and

C. Adequate arrangements will be made for management or disposition of the protected person's property.

6. Final order. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

A. A provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued under provisions similar to section 5-632; and

B. The documents required to terminate a guardianship or conservatorship in this State.

§5-632. Accepting guardianship or conservatorship transferred from another state

1. Petition. To confirm transfer of a guardianship or conservatorship transferred to this State under provisions similar to section 5-631, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

2. Notice. Notice of a petition under subsection 1 must be given to those persons who would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.

3. Hearing. On the court's own motion or on request of the guardian or conservator, the individual subject to guardianship or protected person or other

person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1.

4. Provisional order. The court shall issue an order provisionally granting a petition filed under subsection 1 unless:

A. An objection is made and the objector establishes by a preponderance of the evidence that transfer of the proceeding would be contrary to the best interest of the individual subject to guardianship or protected person; or

B. The guardian or conservator is ineligible for appointment in this State.

5. Final order. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 5-631 transferring the proceeding to this State.

6. Recognition of order from other state. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the individual subject to guardianship's or protected person's need for guardianship or protective order and the appointment of the guardian or conservator.

7. Denial; other proceedings unaffected. The denial by a court of this State of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this State under Part 3 or 4 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

SUBPART 4

MISCELLANEOUS PROVISIONS

§5-641. Uniformity of application and construction

In applying and construing this Part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§5-642. Relation to Electronic Signatures in Global and National Commerce Act

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b).

§5-643. Transitional provisions

1. Proceedings on or after July 1, 2019. This Part applies to guardianship and protective proceedings begun on or after July 1, 2019.

2. Proceedings before July 1, 2019. Subparts 1 and 3 and sections 5-641 and 5-642 apply to proceedings begun before July 1, 2019, regardless of whether a guardianship or protective order has been issued.

PART 7

PUBLIC GUARDIAN AND CONSERVATOR

§5-701. Public guardians and conservators; general

1. Appointment of public guardian or conservator. In any case in which a guardian or conservator may be appointed by the court under this Article, the court may appoint a public guardian or conservator as provided in this Part for persons who are in need of protective services.

2. Department of Health and Human Services. The Department of Health and Human Services shall act as the public guardian or conservator for persons in need of protective services.

3. Article applies to public guardians and conservators. Except as otherwise provided in this Part, the appointment, termination, rights and duties and other provisions for guardians and conservators in this Article apply to public guardians and conservators.

§5-702. Priority of private guardian or conservator

A public guardian or conservator may not be appointed if the court determines that a suitable private guardian or conservator is available and willing to assume the responsibilities of a guardian or conservator.

§5-703. Exclusiveness of public guardian or conservator

When the court has appointed a public guardian or conservator under this Part, no coguardian or coconservator may be appointed for the same individual subject to guardianship or protected person during the continuation of the public guardianship or public conservatorship.

§5-704. Nomination of public guardian or conservator

1. Nomination of public guardian. Any person who is eligible to petition for appointment of a guardian under section 5-302, subsection 1, including the commissioner of any state department, the head of any state institution, the overseers of the poor and the welfare director or health officer of any municipality, may nominate the public guardian.

2. Nomination of public conservator. Any person who is eligible to petition for appointment of a

conservator under section 5-402, subsection 1, including the commissioner of any state department, the head of any state institution, the overseer of the poor and the welfare director or health officer of any municipality, may nominate the public conservator.

3. Article applies to proceedings for determining appointment. Except as supplemented by section 5-705, the proceedings for determining the appointment of a public guardian or conservator are governed by the provisions of this Article for the appointment of guardians and conservators generally.

§5-705. Acceptance by public guardian or conservator; plan

Prior to the appointment of a public guardian or conservator, the appropriate agency nominated shall accept or reject the nomination in writing within 30 days of its receipt of notification that it has been nominated and if the nomination is accepted shall file a detailed plan that, as relevant, must include but is not limited to the type of proposed living arrangement for the individual subject to guardianship, how the individual's financial needs will be met, how the individual's medical and other remedial needs will be met, how the individual's social needs will be met and a plan for the individual's continuing contact with relatives and friends, as well as a plan for the management of the individual's or protected person's estate in the case of a public conservatorship.

§5-706. Officials authorized to act as public guardian or conservator

1. Commissioner of Health and Human Services. When the Department of Health and Human Services is appointed public guardian or conservator of a person, the authority of the public guardian or conservator must be exercised by the Commissioner of Health and Human Services and by any persons duly delegated by the commissioner to exercise such authority.

2. Delegation of authority. Persons duly delegated by the officials authorized to act under subsection 1 may include a staff of competent social workers or competent social workers assigned to the public guardian or conservator by the Department of Health and Human Services. In the event that the delegation is to an individual, such individual must be qualified by reason of education or experience, or both, in administering to the needs of the individual or individuals over whom the individual is to exercise administrative or supervisory authority under the public guardian.

§5-707. Duties and powers of a public guardian or conservator

A public guardian or conservator has the same powers, rights and duties respecting the individual subject to guardianship or the protected person as pro-

vided for guardians and conservators by the other Parts of this Article except as otherwise specifically provided in this Part, including the following particular provisions.

1. Placement in licensed facility; removal. A public guardian may place an individual subject to guardianship in a facility described in Title 22, section 1811 only if the facility is duly licensed. In the event that the license of any such facility is suspended or revoked, the public guardian having any individual subject to guardianship placed in that facility shall remove the individual and effect an appropriate placement of the individual as soon as practicable after knowledge of the suspension or revocation of the license.

2. Examination and evaluation; report to court. A public guardian or conservator at least annually, and at any time when ordered by the court, shall review the case of every person for whom the public guardian or conservator is acting under this Part. A report of each review must be filed with the court. Each review must contain an examination and evaluation of the plan created under section 5-705 for the individual subject to guardianship or protected person and recommendations for a modification of the plan, as appropriate or necessary.

3. Records. A public guardian or conservator shall keep books of account or other records showing separately the principal amount received, increments thereto and disbursements therefrom for the benefit of the individual subject to guardianship or protected person, and such other records as are appropriate for the particular situation, together with the name of the individual subject to guardianship or protected person, the source from which the money was received and the purpose for which the money was expended.

4. In absence of kin, autopsy and burial. A public guardian, in the absence of available next of kin, may authorize the performance of an autopsy upon the body of a deceased individual subject to guardianship. The public guardian, in the absence of available next of kin, or in the event that next of kin refuses to assume responsibility for the deceased individual subject to guardianship, shall cause any deceased individual subject to guardianship to be suitably buried and has authority to expend funds of the individual for that purpose, and in the event the individual is without funds at the time of death, the public guardian shall cause the individual to be suitably buried at public expense, as in the case of the burial of any other deceased indigent person.

§5-708. No change in rights to services

The appointment of a public guardian or conservator in no way enlarges or diminishes the individual subject to guardianship's or protected person's right to services made available to all persons in need of ser-

vice or protection in the State except for the provision of guardianship or conservatorship services as provided under this Article.

§5-709. No change in powers and duties of agency heads and trustees

Nothing in this Article abrogates any other powers or duties vested by law in the head of any public institution, or vested by the settlor of a trust in the trustee thereof, for the benefit of any individual subject to guardianship or protected person for whom the public guardian or conservator is appointed.

§5-710. Bond

The public guardian or conservator is not required to file bonds in individual guardianships or conservatorships, but shall give a surety bond for the joint benefit of the individuals subject to guardianship or protected persons placed under the responsibility of the public guardian or conservator and the State, with a surety company or companies authorized to do business within the State, in an amount not less than the total value of all assets held by the public guardian or conservator, which amount must be computed at the end of each state fiscal year and approved by the Probate Court for Kennebec County. At no time may the bond of each of the public guardians or conservators be less than \$500 respectively.

§5-711. Compensation

1. Reasonable expenses; account for costs. The public guardian or conservator may receive such reasonable amounts for its expenses as guardian or conservator as the Probate Court may allow. The amounts so allowed must be allocated to an account from which may be drawn expenses for filing fees, bond premiums, court costs and other expenses required in the administration of the functions of the public guardian or conservator. No amounts thus received may inure to the benefit of any employee of the public guardian or conservator. Any balance in the account at the end of a fiscal year does not lapse but is carried forward from year to year and used for the purposes provided for in this subsection.

2. Reimbursement of personal expenditures. Any personal expenditures made on the individual subject to guardianship's or protected person's behalf by the public guardian or conservator must, when properly evidenced, be reimbursed out of the individual subject to guardianship's or protected person's estate. Claims for services rendered by state agencies must be submitted to the Probate Court for approval before payment.

§5-712. Individuals subject to guardianship; guardian ad litem costs

1. Guardian ad litem, other special costs. The costs of the guardian ad litem or any other special costs may be paid by the Department of Health and

Human Services, within the limits of the department's budget, when:

A. A person is in need of protective services and:

- (1) A guardian ad litem is appointed under the provisions of this Code; or
- (2) A court incurs special costs in a proceeding concerning the person; and

B. Appointment of a public guardian or conservator is sought or the person, within 3 months prior to the filing of the petition:

- (1) Is or has been a client of the Department of Health and Human Services; or
- (2) Has received services from a worker from the Department of Health and Human Services.

2. Payment of costs. The Department of Health and Human Services is not liable for the costs set out in subsection 1 if the department can demonstrate that the person has assets against which the costs may be assessed or that another more appropriate funding source is available and subject to the court's jurisdiction.

§5-713. Limited public guardianships

The provisions of Parts 2 and 3 regarding limited guardianships apply to the appointment of public guardians.

PART 8

UNIFORM HEALTH CARE DECISIONS ACT

§5-801. Short title

This Part may be known and cited as "the Uniform Health Care Decisions Act."

§5-802. Definitions

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

1. Advance health care directive. "Advance health care directive" means an individual instruction from, or a power of attorney for health care by, an individual with capacity.

2. Agent. "Agent" means an individual with capacity designated in a power of attorney for health care to make a health care decision for the individual granting the power.

3. Capacity. "Capacity" means the ability to have a basic understanding of the diagnosed condition and to understand the significant benefits, risks and alternatives to the proposed health care and the consequences of forgoing the proposed treatment, the ability to make and communicate a health care decision and the ability to understand the consequences of designat-

ing an agent or surrogate to make health care decisions.

4. Guardian. "Guardian" means a judicially appointed guardian or conservator having authority to make a health care decision for an individual.

5. Health care. "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

6. Health care decision. "Health care decision" means a decision made by an individual with capacity or by the individual's agent, guardian or surrogate regarding the individual's health care, including:

A. Selection and discharge of health care providers and institutions;

B. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

C. Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment.

7. Health care institution. "Health care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

8. Health care provider. "Health care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

9. Individual instruction. "Individual instruction" means a direction from an individual with capacity concerning a health care decision for the individual.

10. Life-sustaining treatment. "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a person without capacity and in either a terminal condition or a persistent vegetative state, will serve only to prolong the process of dying. "Life-sustaining treatment" may include artificially administered nutrition and hydration, which is the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

11. Persistent vegetative state. "Persistent vegetative state" means a state that occurs after coma in which the patient totally lacks higher cortical and cognitive function, but maintains vegetative brain stem processes, with no realistic possibility of recovery, as diagnosed in accordance with acceptable medical standards.

12. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

13. Physician. "Physician" means an individual authorized to practice medicine under Title 32.

14. Power of attorney for health care. "Power of attorney for health care" means the designation of an agent with capacity to make health care decisions for the individual granting the power.

15. Primary physician. "Primary physician" means a physician designated by an individual with capacity or by the individual's agent, guardian or surrogate to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

16. Reasonably available. "Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

17. Supervising health care provider. "Supervising health care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for a patient's health care.

18. Surrogate. "Surrogate" means an individual with capacity, other than a patient's agent or guardian, authorized under this Part to make health care decisions as provided in section 5-806.

19. Terminal condition. "Terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment, in the opinion of the primary physician, will result in death within a relatively short time.

§5-803. Advance health care directives

1. Individual instruction. An adult or emancipated minor with capacity may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises. An oral instruction is valid only if made to a health care provider or to an individual who may serve as a surrogate under section 5-806, subsection 2.

2. Power of attorney for health care. An adult or emancipated minor with capacity may execute a power of attorney for health care, which may authorize the agent to make any health care decision the principal could have made while having capacity. The power must be in writing and signed by the principal and 2 witnesses. Notwithstanding any law validating

electronic or digital signatures, signatures of the principal and witnesses must be made in person and not by electronic means. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a residential long-term health care institution at which the principal is receiving care.

3. Effective upon determination that principal lacks capacity. Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has recovered capacity.

4. Determination. Unless otherwise specified in a written advance health care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of an advance health care directive must be made by the primary physician, by a court of competent jurisdiction or, for an individual who has included a directive authorizing mental health treatment in an advance health care directive, by a person qualified to conduct an examination pursuant to Title 34-B, section 3863.

5. Decision in accordance with instructions, wishes, best interest. An agent shall make a health care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

6. Effective without judicial approval. A health care decision made by an agent for a principal is effective without judicial approval.

7. Nomination of guardian. A written advance health care directive may include the individual's nomination of a guardian of the person.

8. Validity of advance health care directive. An advance health care directive is valid for purposes of this Part if it complies with this Part, regardless of when or where executed or communicated, or if it is valid under the laws of the state in which it was executed. An advance health care directive that is valid where executed or communicated is valid for the purposes of this Part.

9. Directing mental health treatment. An advance health care directive is valid for purposes of directing mental health treatment. The terms of the directive must be construed in accordance with this Part and Title 34-B, sections 3831 and 3862.

10. Personal representative for purposes of federal law. A surrogate or an agent named in an advance health care directive has the power and authority to serve as the personal representative of the patient who executed the health care directive for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal Regulations, Parts 160-164. The surrogate or agent has all the rights of the patient with respect to the use and disclosure of the individually identifiable health information and other medical records of the patient.

§5-804. Revocation of advance health care directive

1. Revocation of designation of agent. An individual with capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

2. Revocation of advance health care directive. An individual with capacity may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

3. Communication of revocation. A health care provider, agent, guardian or surrogate who is informed of a revocation by an individual with capacity shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution at which the patient is receiving care.

4. Revocation of spouse as agent. A decree of annulment, divorce, dissolution of marriage or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

5. Revocation of earlier advance health care directive in conflict. An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.

§5-805. Optional form

The following form may, but need not, be used to create an advance health care directive. The other sections of this Part govern the effect of this or any other writing used to create an advance health care directive. An individual with capacity may complete or modify all or any part of the following form.

ADVANCE HEALTH CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It

also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a residential long-term health care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (1) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;
- (2) Select or discharge health care providers and institutions;
- (3) Approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and
- (4) Direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. You must have 2 other individuals sign as witnesses. Give a copy of the signed and completed

form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time.

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

.....
 (name of individual you choose as agent)

 (address) (city) (state) (zip code)

 (home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health care decision for me, I designate as my first alternate agent:

.....
 (name of individual you choose as first alternate agent)

 (address) (city) (state) (zip code)

 (home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health care decision for me, I designate as my second alternate agent:

.....
 (name of individual you choose as second alternate agent)

 (address) (city) (state) (zip code)

 (home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold or withdraw

artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

.....
.....
.....

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box [], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

[] (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

[] (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box [], artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

.....
.....

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

.....
.....

(Add additional sheets if needed)

PART 3

DONATION OF ORGANS AT DEATH

(OPTIONAL)

(10) UPON MY DEATH: (mark applicable box)

[] (a) I give any needed organs, tissues or parts, OR

[] (b) I give the following organs, tissues or parts only:

.....

(c) My gift is for the following purposes: (strike any of the following you do not want)

(i) Transplant

(ii) Therapy

(iii) Research

(iv) Education

PART 4

PRIMARY PHYSICIAN

(OPTIONAL)

DESIGNATION OF PRIMARY PHYSICIAN

(11) I designate the following physician as my primary physician:

.....
 (name of physician)

 (address) (city) (state) (zip code)

 (phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

.....
 (name of physician)

 (address) (city) (state) (zip code)

 (phone)
 * * * * *

(12) **EFFECT OF COPY:** A copy of this form has the same effect as the original.

(13) **SIGNATURES:** Sign and date the form here:

.....
 (date) (sign your name)

 (address) (print your name)

 (city) (state)

SIGNATURES OF WITNESSES:

First witness	2nd witness
.....
(print name)	(print name)
.....
(address)	(address)
.....
(city) (state)	(city) (state)
.....
(signature of witness)	(signature of witness)
.....
(date)	(date)

§5-806. Decisions by surrogate

1. Decisions by surrogate. A surrogate may make a decision to withhold or withdraw life-sustaining treatment for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity, no agent or

guardian has been appointed or the agent or guardian is not reasonably available and the patient is in a terminal condition or a persistent vegetative state as determined by the primary physician.

A surrogate also is authorized to make any other health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian exists, except that a surrogate may not deny surgery, procedures or other interventions that are lifesaving and medically necessary.

A medically necessary procedure is one providing the most patient-appropriate intervention or procedure that can be safely and effectively given.

2. Priority of who may act as surrogate. Any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

- A. The spouse, unless legally separated;
- B. An adult who shares an emotional, physical and financial relationship with the patient similar to that of a spouse;
- C. An adult child;
- D. A parent;
- E. An adult brother or sister;
- F. An adult grandchild;
- G. An adult niece or nephew, related by blood or adoption;
- H. An adult aunt or uncle, related by blood or adoption; or
- I. Any adult relative of the patient, related by blood or adoption, who is familiar with the patient's personal values and is reasonably available for consultation.

3. Adult who has exhibited special concern. If none of the individuals eligible to act as surrogate under subsection 2 is reasonably available, an adult who has exhibited special concern for the patient, who is familiar with the patient's personal values and who is reasonably available may act as surrogate.

4. Communication of assumption of authority. A surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of the patient's family specified in subsection 2 who can be readily contacted.

5. Conflict among potential surrogates; neutral 3rd party or court. If more than one member of a class assumes authority to act as surrogate and they, or members of different classes who are reasonably available, do not agree on a health care decision and the supervising health care provider is so informed, the supervising health care provider may comply with the

decision of the class having priority or a majority of the members of that class who have communicated their views to the provider. The health care provider may refer the members of the class or classes to a neutral 3rd party for assistance in resolving the dispute or to a court of competent jurisdiction. If the class is evenly divided concerning the health care decision and the supervising health care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

6. Decision in accordance with instructions, wishes, best interest. A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest and in good faith. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate. A consent is not valid if it conflicts with the intention of the patient previously expressed to the surrogate.

7. Effective without judicial approval. A health care decision made by a surrogate for a patient lacking capacity is effective without judicial approval.

8. Disqualification. An individual with capacity at any time may disqualify another, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the supervising health care provider of the disqualification.

9. Conflict of interest. A surrogate may not be an owner, operator or employee of a residential long-term health care institution at which the patient is receiving care unless the surrogate is one of the following:

- A. The spouse of the patient;
- B. An adult child of the patient;
- C. A parent of the patient; or
- D. A relative of the patient with whom the patient has resided for more than 6 months prior to the decision.

10. Written declaration supporting authority. A supervising health care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

§5-807. Decisions by guardian

1. Compliance with expressed wishes; cannot revoke advance health care directive. Except as authorized by a court of competent jurisdiction, a guardian shall comply with the individual subject to guardianship's individual instructions and other

wishes, if any, expressed while the individual subject to guardianship had capacity and to the extent known to the guardian and may not revoke the individual subject to guardianship's advance health care directive unless the appointing court expressly so authorizes.

2. Agent's decision takes precedence. Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

3. Effective without judicial approval; exceptions. A health care decision made by a guardian for the individual subject to guardianship is effective without judicial approval, except under the following circumstances:

A. The guardian's decision is contrary to the individual subject to guardianship's individual instructions and other wishes, expressed while the individual subject to guardianship had capacity; or

B. The guardian seeks to withhold or withdraw life-sustaining treatment from the individual subject to guardianship, against the advice of the individual subject to guardianship's primary physician and in the absence of instructions from the individual subject to guardianship, made while the individual subject to guardianship had capacity.

§5-808. Obligations of health care provider

1. Communicate to patient. Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

2. Include in record advance health care directive, surrogate, revocation, disqualification. A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health care record.

3. Include in record determinations on capacity; communicate. A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent, guardian or surrogate or the validity of an advance health care directive shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

4. Compliance. Except as provided in subsections 5 and 6, a health care provider or health care institution providing care to a patient shall:

A. Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

B. Comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

5. Decline to comply; not in compliance; reasons of conscience; contrary to policy. A health care provider may decline to comply with an individual instruction or health care decision if the instruction or decision appears not to be in compliance with this Part or for reasons of conscience. A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision appears not to be in compliance with this Part or if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

6. Decline to comply; ineffective health care; contrary to generally accepted standards. A health care provider or health care institution may decline to comply with an individual instruction or health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

7. Duties if decline to comply. A health care provider or health care institution that declines to comply with an individual instruction or health care decision shall:

A. Promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

B. Provide continuing care to the patient until a transfer can be effected or a court of competent jurisdiction issues a final order regarding the decision; and

C. Unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision.

8. Not as a condition for providing health care. A health care provider or health care institution may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care.

§5-809. Health care information

Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health care information.

§5-810. Immunities

1. Health care provider or institution. A health care provider or health care institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or health care institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

A. Complying with a health care decision of a person apparently having authority and capacity to make a health care decision for a patient, including a decision to withhold or withdraw health care;

B. Declining to comply with a health care decision of a person based on a belief that the person then lacked authority or capacity or that the decision otherwise does not comply with this Part;

C. Complying with an advance health care directive and assuming that the directive was valid when made and has not been revoked or terminated; or

D. Seeking judicial relief from a court of competent jurisdiction.

2. Agent, guardian or surrogate. An individual acting as agent, guardian or surrogate under this Part is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

§5-811. Statutory damages

1. Health care provider or institution; intentional violation. A health care provider or health care institution that intentionally violates this Part is subject to liability to the aggrieved individual for damages of \$500 or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

2. Interference with autonomy to make health care decisions. A person who intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance health care directive or a revocation of an advance health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke or not to give an advance health care directive, is subject to liability to that individual for damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

§5-812. Capacity

1. Right to make health care decisions while having capacity. This Part does not affect the right of an individual to make health care decisions while having capacity to do so.

2. Presumed to have capacity; rebuttal. An individual is presumed to have capacity to make a health care decision, to give or revoke an advance health care directive and to designate or disqualify a surrogate. This presumption may be rebutted by a determination by the individual's primary physician or by a court of competent jurisdiction.

§5-813. Effect of copy

A copy of a written advance health care directive, revocation of an advance health care directive or designation or disqualification of a surrogate has the same effect as the original.

§5-814. Effect of Part

1. No presumption concerning intention if no advance health care directive or if revoked. This Part does not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health care directive.

2. Death resulting from withholding or withdrawing health care. Death resulting from the withholding or withdrawal of health care in accordance with this Part does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

3. Prohibited by other statutes. This Part does not authorize mercy killing, assisted suicide, euthanasia or the provision, withholding or withdrawal of health care to the extent prohibited by other statutes of this State.

4. Health care contrary to generally accepted health care standards. This Part does not authorize or require a health care provider or health care institution to provide health care contrary to generally accepted health care standards applicable to the health care provider or health care institution.

5. Admission to a mental health institution. This Part does not authorize an agent or surrogate to consent to the admission of an individual to a mental health institution unless the individual's written advance health care directive expressly so provides.

6. Other statutes governing treatment for mental illness. This Part does not affect other statutes of this State governing treatment for mental illness of an individual involuntarily committed to a mental health institution.

§5-815. Judicial relief

On petition of a patient, the patient's agent, guardian or surrogate, a health care or social services provider or health care institution involved with the patient's care, a state agency mandated to provide adult protective services pursuant to Title 22, chapter 958-A, or an adult relative or adult friend of the patient, the court may enjoin or direct a health care decision or other equitable relief.

§5-816. Uniformity of application and construction

This Part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this Part among states enacting it.

§5-817. Military advanced medical directives

A military advanced medical directive executed in accordance with 10 United States Code, Section 1044c is valid in this State.

PART 9**MAINE UNIFORM POWER OF ATTORNEY ACT****SUBPART 1****GENERAL PROVISIONS AND DEFINITIONS****§5-901. Short title**

This Part may be known and cited as "the Maine Uniform Power of Attorney Act."

§5-902. Definitions

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

1. Agent. "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact or otherwise. "Agent" includes an original agent, co-agent, successor agent and a person to whom an agent's authority is delegated.

2. Durable. "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.

3. Electronic. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

4. Good faith. "Good faith" means honesty in fact.

5. Incapacity. "Incapacity" means inability of an individual to effectively manage property or business affairs because the individual:

A. Is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause

to the extent that the individual lacks sufficient understanding, capacity or ability to receive and evaluate information or make or communicate decisions regarding the individual's property or business affairs; or

B. Is:

- (1) Missing;
- (2) Detained, including incarcerated in a penal system; or
- (3) Outside the United States and unable to return.

6. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

7. Power of attorney. "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term "power of attorney" is used.

8. Presently exercisable general power of appointment. "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors or the creditors of the principal's estate. "Presently exercisable general power of appointment" includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard or the passage of the specified period. "Presently exercisable general power of appointment" does not include a power exercisable in a fiduciary capacity or only by will.

9. Principal. "Principal" means an individual who grants authority to an agent in a power of attorney.

10. Property. "Property" means anything that may be the subject of ownership, whether real or personal or legal or equitable, or any interest or right therein.

11. Sign. "Sign" means, with present intent to authenticate or adopt a record:

- A. To execute or adopt a tangible symbol; or
- B. To attach to or logically associate with the record an electronic sound, symbol or process.

12. Stocks and bonds. "Stocks and bonds" means stocks, bonds, mutual funds and all other types of securities and financial instruments, whether held

directly, indirectly or in any other manner. "Stocks and bonds" does not include commodity futures contracts and call or put options on stocks or stock indexes.

§5-903. Applicability

This Part applies to all powers of attorney except:

1. Coupled with an interest in the subject of the power. A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

2. Health care decisions. A power to make health care decisions;

3. Proxy or other delegation to exercise rights. A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

4. Governmental purpose. A power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose.

§5-904. Power of attorney is durable

A power of attorney created under this Part is durable unless it expressly provides that it is terminated by the incapacity of the principal.

§5-905. Execution of power of attorney; notices

1. Signed by principal; acknowledged. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A power of attorney under this Part is not valid unless it is acknowledged before a notary public or other individual authorized by law to take acknowledgments.

2. Notices for durable power of attorney. A durable power of attorney under this Part is not valid unless it contains the following notices substantially in the following form:

"Notice to the Principal: As the "Principal" you are using this power of attorney to grant power to another person (called the Agent) to make decisions about your property and to use your property on your behalf. Under this power of attorney you give your Agent broad and sweeping powers to sell or otherwise dispose of your property without notice to you. Under this document your Agent will continue to have these powers after you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 9. You

have the right to revoke this power of attorney at any time as long as you are not incapacitated. If there is anything about this power of attorney that you do not understand, you should ask an attorney to explain it to you.

Notice to the Agent: As the "Agent" you are given power under this power of attorney to make decisions about the property belonging to the Principal and to dispose of the Principal's property on the Principal's behalf in accordance with the terms of this power of attorney. This power of attorney is valid only if the Principal is of sound mind when the Principal signs it. When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. The duties are more fully explained in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 9 and Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are generally not entitled to use the Principal's property for your own benefit or to make gifts to yourself or others unless the power of attorney gives you such authority. If you violate your duty under this power of attorney, you may be liable for damages and may be subject to criminal prosecution. You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events of termination are more fully explained in the Maine Uniform Power of Attorney Act and include, but are not limited to, revocation of your authority or of the power of attorney by the Principal, the death of the Principal or the commencement of divorce proceedings between you and the Principal. If there is anything about this power of attorney or your duties under it that you do not understand, you should ask an attorney to explain it to you."

§5-906. Validity of power of attorney

1. Executed on or after July 1, 2019. A power of attorney executed in this State on or after July 1, 2019 is valid if its execution complies with section 5-905.

2. Executed on or after July 1, 2010 but before July 1, 2019. A power of attorney executed on or after July 1, 2010 but before July 1, 2019 is valid if its execution complied with former Title 18-A, section 5-906.

3. Executed before July 1, 2010. A power of attorney executed in this State before July 1, 2010 is valid if its execution complied with the law of this State as it existed at the time of execution.

4. Executed other than in this State. A power of attorney executed other than in this State is valid in

this State if, when the power of attorney was executed, the execution complied with:

A. The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 5-907; or

B. The requirements for a military power of attorney pursuant to 10 United States Code, Section 1044b, as amended.

5. Defective notice. A power of attorney executed in this State is valid and enforceable 2 years after execution if the notice required by section 5-905, subsection 2 is included but is incomplete or defective in any respect.

6. Copy. Except as otherwise provided by statute other than this Part, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

§5-907. Meaning and effect of power of attorney

The meaning and effect of a power of attorney are determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

§5-908. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary

1. Nomination of conservator or guardian. In a power of attorney, a principal may nominate a conservator of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

2. Relation of agent to court-appointed fiduciary. If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended or terminated by the court.

§5-909. When power of attorney effective

1. Effective when executed unless otherwise provided. A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

2. Future event or contingency; determination. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the princi-

pal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

3. Incapacity; determination. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

A. A physician that the principal is incapacitated within the meaning of section 5-902, subsection 5, paragraph A; or

B. An attorney, a judge or an appropriate governmental official that the principal is incapacitated within the meaning of section 5-902, subsection 5, paragraph B.

4. Personal representative pursuant to federal law. A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

§5-910. Termination of power of attorney or agent's authority

1. Termination of power of attorney. A power of attorney terminates when:

A. The principal dies;

B. The principal becomes incapacitated, if the power of attorney is not durable;

C. The principal revokes the power of attorney;

D. The power of attorney provides that it terminates;

E. The purpose of the power of attorney is accomplished; or

F. The principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns and the power of attorney does not provide for another agent to act under the power of attorney.

2. Termination of agent's authority. An agent's authority terminates:

A. When the principal revokes the authority;

B. When the agent dies, becomes incapacitated or resigns;

C. When an action is filed for the termination or annulment of the agent's marriage to the principal

or their legal separation, unless the power of attorney otherwise provides;

D. Upon the sooner to occur of either:

(1) The marriage of the principal to a person other than the agent if upon or after execution of the power of attorney the principal and the agent are or became registered domestic partners, the filing with the domestic partner registry, in accordance with Title 22, section 2710, subsection 4, of a notice consenting to the termination of a registered domestic partnership of the principal and the agent; or

(2) Upon service, in accordance with Title 22, section 2710, subsection 4, of a notice of intent to terminate the registered domestic partnership of the principal and the agent; or

E. When the power of attorney terminates.

3. Agent's authority until termination. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection 2, notwithstanding a lapse of time since the execution of the power of attorney.

4. Termination of authority not effective without actual knowledge. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

5. Incapacity does not revoke or terminate nondurable power of attorney without actual knowledge. Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

6. Previously executed power of attorney not revoked unless provided. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

§5-911. Coagents and successor agents

1. Coagents. A principal may designate 2 or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

2. Successor agents. A principal may designate one or more successor agents to act if an agent resigns,

dies, becomes incapacitated, is not qualified to serve or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office or function. Unless the power of attorney otherwise provides, a successor agent:

A. Has the same authority as that granted to the original agent; and

B. May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve or have declined to serve.

3. Not liable for actions of other agent. Except as otherwise provided in the power of attorney and subsection 4, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

4. Actual knowledge of breach or imminent breach; damages. An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's interests. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

§5-912. Reimbursement and compensation of agent

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances. The factors set forth in section 3-721, subsection 2 should be considered as guides in determining the reasonableness of compensation under this section.

§5-913. Agent's acceptance

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

§5-914. Agent's duties

1. Minimum mandatory duties. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

A. Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise act as a fiduciary under the standards of care applicable to trustees as described under Title 18-B, sections 802 to 807 and Title 18-B, chapter 9;

B. Act in good faith; and

C. Act only within the scope of authority granted in the power of attorney.

2. Default duties. Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

A. Act loyally for the principal's benefit;

B. Act so as not to create a conflict of interest that impairs the agent's ability to act impartially;

C. Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances;

D. Keep a record of all receipts, disbursements and transactions made on behalf of the principal;

E. Cooperate with a person that has authority to make health care decisions for the principal to carry out such decisions; and

F. Attempt to preserve the principal's estate plan, to the extent actually known by the agent, based on all relevant factors, including:

(1) The value and nature of the principal's property;

(2) The principal's foreseeable obligations and need for maintenance;

(3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; and

(4) Eligibility for a benefit, a program or assistance under a statute, rule or regulation.

3. Failure to preserve estate plan; good faith.

An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

4. Agent also benefits. An agent that acts with care, competence and diligence for the sole interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

5. Special skills or expertise. If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

6. Value of property declines. Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

7. Delegation of authority. An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

8. Disclosure upon request. Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

§5-915. Exoneration of agent

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

1. Dishonesty, improper motive, reckless indifference. Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive or with reckless indifference to the purposes of the power of attorney; or

2. Abuse of relationship. Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

§5-916. Judicial relief

1. Petition. The following persons may petition the Probate Court or the Superior Court for the county in which either the principal or the agent resides to construe a power of attorney or review the agent's conduct and grant appropriate relief:

A. The principal or the agent;

B. A guardian, conservator or other fiduciary acting for the principal;

C. A person authorized to make health care decisions for the principal;

D. The principal's spouse, registered domestic partner, parent or descendant;

E. An individual who would qualify as a presumptive heir of the principal;

F. A person named as a beneficiary to receive any property, benefit or contractual right on the principal's death or as a beneficiary of a trust created

by or for the principal that has a financial interest in the principal's estate;

G. A governmental agency having regulatory authority to protect the welfare of the principal;

H. The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

I. A person asked to accept the power of attorney.

2. Motion by principal to dismiss; lack of capacity. Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

§5-917. Agent's liability

An agent that violates this Part is liable to the principal or the principal's successors in interest for the amount required to:

1. Restore property. Restore the value of the principal's property to what it would have been had the violation not occurred; and

2. Reimburse fees and costs. Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

§5-918. Agent's resignation; notice

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

1. Conservator, guardian, coagent, successor agent. To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

2. Caregiver, interested person, governmental agency. If there is no person described in subsection 1, to:

A. The principal's caregiver;

B. Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

C. A governmental agency having authority to protect the welfare of the principal.

§5-919. Acceptance of and reliance upon acknowledged power of attorney

1. Acknowledged. For purposes of this section and section 5-920, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgments.

2. Signature not genuine. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not

genuine may rely upon the presumption under section 5-905 that the signature is genuine.

3. Void, invalid or terminated; exceeding or improper authority. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid or terminated, that the purported agent's authority is void, invalid or terminated or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect and the agent had not exceeded and had properly exercised the authority.

4. Request and rely upon. A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

A. An agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney;

B. An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

C. An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

5. Expense of translation or opinion of counsel. An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance.

6. Employee without actual knowledge. For purposes of this section and section 5-920, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

§5-920. Liability for refusal to accept acknowledged power of attorney

1. Request within 7 days; accept within 5 days of receipt. Except as otherwise provided in subsection 2:

A. A person shall either accept an acknowledged power of attorney or request a certification, a translation or an opinion of counsel under section 5-919, subsection 4 no later than 7 business days after presentation of the power of attorney for acceptance;

B. If a person requests a certification, a translation or an opinion of counsel under section 5-919,

subsection 4, the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation or opinion of counsel; and

C. A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

2. Acceptance not required. A person is not required to accept an acknowledged power of attorney if:

A. The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

B. Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

C. The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

D. A request for a certification, a translation or an opinion of counsel under section 5-919, subsection 4 is refused;

E. The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation or an opinion of counsel under section 5-919, subsection 4 has been requested or provided; or

F. The person has a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or a person acting for or with the agent and the person makes, or has actual knowledge that another person has made, a report to the Department of Health and Human Services regarding such beliefs.

3. Consequences of refusal. A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

A. A court order mandating acceptance of the power of attorney; and

B. Liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

§5-921. Principles of law and equity

Unless displaced by a provision of this Part, the principles of law and equity supplement this Part.

§5-922. Laws applicable to financial institutions and entities

This Part does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this Part.

§5-923. Remedies under other law

The remedies under this Part are not exclusive and do not abrogate any right or remedy under the law of this State other than this Part.

SUBPART 2
AUTHORITY

§5-931. Authority that requires specific grant; grant of general authority

1. Specific grant of authority required. An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- A. Create, amend, revoke or terminate an inter vivos trust;
- B. Make a gift;
- C. Create or change rights of survivorship;
- D. Create or change a beneficiary designation;
- E. Delegate authority granted under the power of attorney;
- F. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- G. Exercise fiduciary powers that the principal has authority to delegate; and
- H. Disclaim property, including a power of appointment.

2. Limitation on creating interest in principal's property. Notwithstanding a grant of authority to do an act described in subsection 1, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, registered domestic partner or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

3. General authority. Subject to subsections 1, 2, 4 and 5, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 5-934 to 5-946.

4. Authority to make a gift. Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 5-947.

5. Overlapping subjects. Subject to subsections 1, 2 and 4, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

6. Authority with respect to principal's property. Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this State and whether or not the authority is exercised or the power of attorney is executed in this State.

7. Act pursuant to power of attorney. An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

§5-932. Incorporation of authority

1. Reference to subject. An agent has authority described in this subpart if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in sections 5-934 to 5-947 or cites the section in which the authority is described.

2. Reference to section number. A reference in a power of attorney to general authority with respect to the descriptive term for a subject in sections 5-934 to 5-947 or a citation to a section of sections 5-934 to 5-947 incorporates the entire section as if it were set out in full in the power of attorney.

3. Modify incorporated authority. A principal may modify authority incorporated by reference.

§5-933. Construction of authority generally

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 5-934 to 5-947 or that grants to an agent authority to do all acts that a principal could do pursuant to section 5-931, subsection 3, a principal authorizes the agent, with respect to that subject, to:

1. Money or another thing of value. Demand, receive and obtain, by litigation or otherwise, money or another thing of value to which the principal is, may become or claims to be entitled and conserve, invest, disburse or use anything so received or obtained for the purposes intended;

2. Contracts. Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release or modify the contract or another contract made by or on behalf of the principal;

3. Instrument or communication. Execute, acknowledge, seal, deliver, file or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

4. Claim in favor of or against principal; intervene. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

5. Assistance of court or governmental agency. Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

6. Advisors. Engage, compensate and discharge an attorney, accountant, discretionary investment manager, expert witness or other advisor;

7. Record, report or other document. Prepare, execute and file a record, report or other document to safeguard or promote the principal's interest under a statute, rule or regulation;

8. Communication with government or instrumentality. Communicate with any representative or employee of a government or governmental subdivision, agency or instrumentality on behalf of the principal;

9. Access communications. Access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone or other means; and

10. Any lawful act. Do any lawful act with respect to the subject and all property related to the subject.

§5-934. Real property

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

1. Acquire or reject an interest in real property. Demand, buy, lease, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject an interest in real property or a right incident to real property;

2. Grant or dispose of an interest in real property. Sell; exchange; convey with or without covenants, representations or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute

to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

3. Interest in real property as security. Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

4. Claim to real property. Release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other claim to real property that exists or is asserted;

5. Manage or conserve interest in real property. Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

A. Insuring against liability or casualty or other loss;

B. Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

C. Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

D. Purchasing supplies, hiring assistance or labor and making repairs or alterations to the real property;

6. Structures or other improvements. Use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

7. Reorganization with respect to real property. Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

A. Selling or otherwise disposing of them;

B. Exercising or selling an option, right of conversion or similar right with respect to them; and

C. Exercising any voting rights in person or by proxy;

8. Form of title. Change the form of title of an interest in or right incident to real property; and

9. Public use. Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

§5-935. Tangible personal property

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

1. Acquire or reject interest in tangible personal property. Demand, buy, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

2. Grant or otherwise dispose of interest in tangible personal property. Sell; exchange; convey with or without covenants, representations or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;

3. Security interest in tangible personal property. Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

4. Claim to tangible personal property. Release, assign, satisfy or enforce by litigation or otherwise a security interest, lien or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; and

5. Manage or conserve tangible personal property. Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

A. Insuring against liability or casualty or other loss;

B. Obtaining or regaining possession of or protecting the property or interest by litigation or otherwise;

C. Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them;

D. Moving the property from place to place;

E. Storing the property for hire or on a gratuitous bailment;

F. Using and making repairs, alterations or improvements to the property; and

G. Changing the form of title of an interest in tangible personal property.

§5-936. Stocks and bonds

Unless the power of attorney otherwise provides, language in a power of attorney granting general au-

thority with respect to stocks and bonds authorizes the agent to:

1. Buy, sell and exchange. Buy, sell and exchange stocks and bonds;

2. Stocks and bonds account. Establish, continue, modify or terminate an account with respect to stocks and bonds;

3. Security. Pledge stocks and bonds as security to borrow, pay, renew or extend the time of payment of a debt of the principal;

4. Evidences of ownership. Receive certificates and other evidences of ownership with respect to stocks and bonds; and

5. Voting rights. Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts and consent to limitations on the right to vote.

§5-937. Commodities and options

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

1. Commodity futures, stock options. Buy, sell, exchange, assign, settle and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

2. Option accounts. Establish, continue, modify and terminate option accounts.

§5-938. Banks and other financial institutions

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

1. Banking arrangement by principal. Continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;

2. Banking arrangement selected by agent. Establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;

3. Contract for services. Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

4. Withdraw property of principal. Withdraw, by check, order, electronic funds transfer or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

5. Receive and act on documents. Receive statements of account, vouchers, notices and similar documents from a financial institution and act with respect to them;

6. Safe deposit box or vault. Enter a safe deposit box or vault and withdraw or add to the contents;

7. Borrow and pledge as security. Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

8. Negotiable and nonnegotiable paper of the principal. Make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; transfer money; receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due;

9. Receive and act on negotiable and nonnegotiable instruments. Receive for the principal and act upon a sight draft, warehouse receipt or other document of title, whether tangible or electronic, or other negotiable or nonnegotiable instrument;

10. Letters of credit. Apply for, receive and use letters of credit, credit and debit cards, electronic transaction authorizations and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

11. Extension of time of payment. Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

§5-939. Operation of entity or business

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

1. Ownership interest. Operate, buy, sell, enlarge, reduce or terminate an ownership interest;

2. Duty, liability, right, power, privilege or option. Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege or option that the principal has, may have or claims to have;

3. Ownership agreement. Enforce the terms of an ownership agreement;

4. Ownership interest litigation. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with

respect to litigation to which the principal is a party because of an ownership interest;

5. Stocks and bonds. Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege or option the principal has or claims to have as the holder of stocks and bonds;

6. Stocks and bonds litigation. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

7. Sole ownership. With respect to an entity or business owned solely by the principal:

A. Continue, modify, renegotiate, extend and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

B. Determine:

(1) The location of its operation;

(2) The nature and extent of its business;

(3) The methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in its operation;

(4) The amount and types of insurance carried; and

(5) The mode of engaging, compensating and dealing with its employees and accountants, attorneys or other advisors;

C. Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

D. Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

8. Additional capital. Put additional capital into an entity or business in which the principal has an interest;

9. Reorganization, consolidation, conversion, domestication or merger. Join in a plan of reorganization, consolidation, conversion, domestication or merger of the entity or business in which the principal has an interest;

10. Sell or liquidate. Sell or liquidate all or part of an entity or business in which the principal has an interest;

11. Buy-out agreement value. Establish the value of an entity or business under a buy-out agreement to which the principal is a party;

12. Reports and other papers; payments. Prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments; and

13. Taxes, assessments, fines and penalties. Pay, compromise or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

§5-940. Insurance and annuities

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

1. Insurance or annuity contract procured by principal. Continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

2. New insurance or annuity contract for principal and family. Procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, registered domestic partner, children and other dependents and select the amount, type of insurance or annuity and mode of payment;

3. Insurance or annuity contract procured by agent. Pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;

4. Loan secured by insurance or annuity contract. Apply for and receive a loan secured by a contract of insurance or annuity;

5. Surrender, cash on insurance or annuity contract. Surrender and receive the cash surrender value on a contract of insurance or annuity;

6. Election. Exercise an election;

7. Investment powers. Exercise investment powers available under a contract of insurance or annuity;

8. Manner of paying premiums. Change the manner of paying premiums on a contract of insurance or annuity;

9. Change or convert type. Change or convert the type of insurance or annuity with respect to which

the principal has or claims to have authority described in this section;

10. Benefit or assistance to guarantee or pay premiums. Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

11. Interest of principal in contract. Collect, sell, assign, hypothecate, borrow against or pledge the interest of the principal in a contract of insurance or annuity;

12. Form and timing of payment of proceeds. Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

13. Tax or assessment. Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

§5-941. Estate, trust and other beneficial interest

1. Definition. As used in this section, "estate, trust and other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow or custodianship or a fund from which the principal is, may become or claims to be entitled to a share or payment.

2. General authority. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to an estate, trust and other beneficial interest authorizes the agent to:

A. Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment from the fund;

B. Demand or obtain money or another thing of value to which the principal is, may become or claims to be entitled by reason of the fund, by litigation or otherwise;

C. Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

D. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to ascertain the meaning, validity or effect of a deed, will, declaration of trust or other instrument or transaction affecting the interest of the principal;

E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to remove, substitute or surcharge a fiduciary;

F. Conserve, invest, disburse or use anything received for an authorized purpose; and

G. Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities and other property to the trustee of a revocable trust created by the principal as settlor.

§5-942. Claims and litigation

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

1. Assert and maintain claim. Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or defense, including an action to recover property or other thing of value, or recover damages sustained by the principal; eliminate or modify tax liability; or seek an injunction, specific performance or other relief;

2. Participate in litigation. Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

3. Effect or satisfy judgment, order or decree. Seek an attachment, garnishment, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree;

4. Offer of judgment or admission of facts; bind principal. Make or accept a tender, offer of judgment or admission of facts, submit a controversy on an agreed statement of facts, consent to examination and bind the principal in litigation;

5. Alternative dispute resolution, settle and compromise. Submit to alternative dispute resolution, settle and propose or accept a compromise;

6. Service of process; procedure. Waive the issuance and service of process upon the principal; accept service of process; appear for the principal; designate persons upon which process directed to the principal may be served; execute and file or deliver stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and give surety and indemnity bonds; contract and pay for the preparation and printing of records and briefs; and receive, execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;

7. Bankruptcy or insolvency; reorganization, receivership or appointment of receiver or trustee. Act for the principal with respect to bankruptcy or

insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;

8. Pay claim or litigation. Pay a judgment, award or order against the principal or a settlement made in connection with a claim or litigation; and

9. Receive settlement of or proceeds of claim or litigation. Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

§5-943. Personal and family maintenance

1. General authority. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

A. Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse or the principal's registered domestic partner and the following individuals, whether living when the power of attorney is executed or later born:

(1) Individuals legally entitled to be supported by the principal; and

(2) Individuals whom the principal has customarily supported or indicated the intent to support;

B. Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

C. Provide living quarters for the individuals described in paragraph A by:

(1) Purchase, lease or other contract; or

(2) Paying the operating costs, including interest, amortization payments, repairs, improvements and taxes, for premises owned by the principal or occupied by those individuals;

D. Provide normal domestic help, usual vacations and travel expenses and funds for shelter, clothing, food, appropriate education, including post-secondary and vocational education, and other current living costs for the individuals described in paragraph A;

E. Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph A;

F. Act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., as amended, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal;

G. Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing them, for the individuals described in paragraph A;

H. Maintain credit and debit accounts for the convenience of the individuals described in paragraph A and open new accounts; and

I. Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or to continue contributions to those organizations.

2. Authority with respect to gifts. Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this Part.

§5-944. Benefits from governmental programs or civil or military service

1. Definition. As used in this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute, rule or regulation including Social Security, Medicare and Medicaid.

2. General authority. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

A. Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 5-943, subsection 1, paragraph A and for shipment of their household effects;

B. Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument for that purpose;

C. Enroll in, apply for, select, reject, change, amend or discontinue, on the principal's behalf, a benefit or program;

D. Prepare, file and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute, rule or regulation;

E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute, rule or regulation; and

F. Receive the financial proceeds of a claim described in paragraph D and conserve, invest, disburse or use for a lawful purpose anything so received.

§5-945. Retirement plans

1. Definition. As used in this section, "retirement plan" means a plan or account created by an employer, the principal or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary or owner, including a plan or account under the following sections of the federal Internal Revenue Code:

A. An individual retirement account under 26 United States Code, Section 408, as amended;

B. A Roth individual retirement account under 26 United States Code, Section 408A, as amended;

C. A deemed individual retirement account under 26 United States Code, Section 408(q), as amended;

D. An annuity or mutual fund custodial account under 26 United States Code, Section 403(b), as amended;

E. A pension, profit-sharing, stock bonus or other retirement plan qualified under 26 United States Code, Section 401(a), as amended;

F. A plan under 26 United States Code, Section 457(b), as amended; and

G. A nonqualified deferred compensation plan under 26 United States Code, Section 409A, as amended.

2. General authority. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

A. Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

B. Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

C. Establish a retirement plan in the principal's name;

D. Make contributions to a retirement plan;

E. Exercise investment powers available under a retirement plan; and

F. Borrow from, sell assets to or purchase assets from a retirement plan.

§5-946. Taxes

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

1. Prepare, sign and file returns and other documents. Prepare, sign and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under 26 United States Code, Section 2032A, as amended, closing agreements and any power of attorney required by the federal Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

2. Taxes due, refunds, bonds, confidential information and deficiencies. Pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the federal Internal Revenue Service or other taxing authority;

3. Election under tax law. Exercise any election available to the principal under federal, state, local or foreign tax law; and

4. Act for principal in all tax matters. Act for the principal in all tax matters for all periods before the federal Internal Revenue Service or other taxing authority.

§5-947. Gifts

1. Gift. For the purposes of this section, a gift for the benefit of a person includes a gift to a trust, an account under the Maine Uniform Transfers to Minors Act and a tuition savings account or prepaid tuition plan as defined under 26 United States Code, Section 529, as amended.

2. Consistent with principal's objectives. An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if known by the agent and, if unknown, as the agent determines is consistent with the

principal's objectives based on all relevant factors, including:

A. The value and nature of the principal's property;

B. The principal's foreseeable obligations and need for maintenance;

C. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes;

D. Eligibility for a benefit, a program or assistance under a statute, rule or regulation; and

E. The principal's personal history of making or joining in making gifts.

SUBPART 3

STATUTORY FORMS

§5-951. Agent's certification

The following optional form may be used by an agent to certify facts concerning a power of attorney.

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of

County of

I,

(Name of Agent), certify under penalty of perjury that (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated

I further certify that to my knowledge:

(1) The Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) If the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4)
.....
.....
.....
.....

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

.....
Agent's Signature Date

.....
Agent's Name Printed

.....
Agent's Address

.....
Agent's Telephone Number
This document was acknowledged before me on
..... (Date)

by
(Name of Agent)
..... (Seal, if any)

Signature of Notary/Attorney
My commission expires:

This document prepared by:
.....

SUBPART 4

MISCELLANEOUS PROVISIONS

§5-961. Uniformity of application and construction

In applying and construing this Part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

§5-962. Relation to Electronic Signatures in Global and National Commerce Act

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b).

§5-963. Effect on existing powers of attorney

Except as otherwise provided in this Part:

1. Application to powers of attorney. This Part applies to a power of attorney created before, on or after July 1, 2019;

2. Application to judicial proceedings commenced on or after July 1, 2019. This Part applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2019; and

3. Application to judicial proceedings commenced before July 1, 2019. This Part applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2019, unless the court finds that application of a provision of this Part would substantially interfere with the effective conduct of the

judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

An act done before July 1, 2019 is not affected by this Part.

ARTICLE 6

NONPROBATE TRANSFERS ON DEATH

PART 1

PROVISIONS RELATING TO EFFECT OF DEATH

§6-101. Nonprobate transfers on death

1. Nonprobate transfer on death nontestamentary. A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement or other written instrument of a similar nature is nontestamentary. Also nontestamentary is a written provision that:

A. Money or other benefits due to, controlled by or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

B. Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

C. Any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

2. Rights of creditors. Nothing in this section limits the rights of creditors under other laws of this State.

§6-102. Liability of nonprobate transferees for creditor claims and statutory allowances

1. "Nonprobate transfer" defined. As used in this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this State, to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for

the benefit of the transferor or apply the property to discharge claims against the transferor's probate estate.

2. Liability of nonprobate transferee. Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

3. Priority of liability. Nonprobate transferees are liable for the insufficiency described in subsection 2 in the following order of priority:

A. A transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

B. The trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled; and

C. Other nonprobate transferees, in proportion to the values received.

4. Interests of beneficiaries to satisfy liability. Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devised under it.

5. Instrument direct apportionment; conflicts. A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that instrument or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

6. Liability enforceable in this State. Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this State, whether or not the transferee is located in this State.

7. Written demand for proceeding. A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate at the expense of the person making the demand and not of the estate. A personal representa-

tive who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

8. Deadline for proceedings. A proceeding under this section must be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

9. Liability of obligor, trustee. Unless a written notice asserting that a decedent's probate estate is non-existent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following provisions apply.

A. Payment or delivery of assets by a financial institution, register or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

B. A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

PART 2

MULTIPLE-PARTY ACCOUNTS

SUBPART 1

DEFINITIONS AND GENERAL PROVISIONS

§6-201. Definitions

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

1. Account. "Account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit and share account.

2. Agent. "Agent" means a person authorized to make account transactions for a party.

3. Beneficiary. "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

4. Financial institution. "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank,

building and loan association, savings and loan company or association and credit union.

5. Multiple-party account. "Multiple-party account" means an account payable on request to one or more of 2 or more parties, whether or not a right of survivorship is mentioned.

6. Party. "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

7. Payment. "Payment," as it relates to payment of sums on deposit, includes withdrawal, payment to a party or 3rd person pursuant to a check or other request and a pledge of sums on deposit by a party or a setoff, reduction or other disposition of all or part of an account pursuant to a pledge.

8. POD designation. "POD designation" means the designation of:

A. A beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries;
or

B. A beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

9. Receive. "Receive," as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established or, if the terms of the account require notice at a particular place, in the place required.

10. Request. "Request" means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution. If terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

11. Sums on deposit. "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

12. Terms of the account. "Terms of the account" includes the deposit agreement and other terms

and conditions, including the form, of the contract of deposit.

§6-202. Limitation on scope of Part

This Part does not apply to:

1. Business purpose. An account established for a partnership, joint venture or other organization for a business purpose;

2. Controlled by agent or trustee. An account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association or charitable or civic organization; or

3. Other relationship. A fiduciary or trust account in which the relationship is established other than by the terms of the account.

§6-203. Types of account; existing accounts

1. Single-party or multiple-party accounts. An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to section 6-212, subsection 3, either a single-party account or a multiple-party account may have a POD designation, an agency designation or both.

2. Accounts governed by this Part. An account established before, on or after the July 1, 2019, whether in the form prescribed in section 6-204 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship and with or without a POD designation or an agency designation, within the meaning of this Part and is governed by this Part.

§6-204. Forms

1. Form. A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this Part applicable to an account of that type.

UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

.....

.....

OWNERSHIP [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

..... MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

..... SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

.....
.....

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

.....
.....

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

..... MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

[To Add Agency Designation to Account, Name One or More Agents]:

.....
.....

[Select One and Initial]:

..... AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

..... AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

2. Depositor's intent. A contract of deposit that does not contain provisions in substantially the form provided in subsection 1 is governed by the provisions of this Part applicable to the type of account that most nearly conforms to the depositor's intent.

§6-205. Designation of agent

1. Designation of agent by all parties. By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

2. Disability or incapacity. Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

3. Death. Death of the sole party or last surviving party terminates the authority of an agent.

§6-206. Applicability of Part

The provisions of subpart 2 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors and do not apply to the right of those persons to payment as determined by the terms of the account. Subpart 3 governs the liability and set-off rights of financial institutions that make payments pursuant to subpart 3.

SUBPART 2

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

§6-211. Ownership during lifetime

1. "Net contribution" defined. As used in this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party that have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. "Net contribution" includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

2. Interest based on net contribution of each party. During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise the net contribution of each is presumed to be an equal amount.

3. Beneficiary; no right to sums. A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

4. Agent; no beneficial right to sums. An agent in an account with an agency designation has no beneficial right to sums on deposit.

§6-212. Rights at death

1. Multiple-party account. Except as otherwise provided in this Part, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If 2 or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 6-211 belongs to the surviving spouse. If 2 or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 6-211 belongs to the surviving parties in equal shares and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 6-211, and the right of survivorship continues between the surviving parties.

2. POD designation. In an account with a POD designation:

A. On death of one of 2 or more parties, the rights in sums on deposit are governed by subsection 1; and

B. On death of the sole party or the last survivor of 2 or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If 2 or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

3. No POD designation; no right of survivorship. Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 6-211 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

4. Liability for unpaid requests for payment. The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

§6-213. Alteration of rights

1. Rights determined by terms of account. Rights at the death of a party under section 6-212 are determined by the terms of the account at the death of the party. A party may alter the terms of the account by a notice signed by the party and given to the financial institution to change the terms of the account or to stop or vary payment under the terms of the account. To be effective, the notice must be received by the financial institution during the party's lifetime.

2. Right of survivorship not altered by will. A right of survivorship arising from the express terms of the account, section 6-212 or a POD designation may not be altered by a will.

§6-214. Accounts and transfers nontestamentary

Except as provided in Article 2, Part 2 or as a consequence of and to the extent directed by section 6-102, a transfer resulting from the application of section 6-212 is effective by reason of the terms of the account involved and this Part and is not testamentary or subject to Articles 1 to 4.

SUBPART 3**PROTECTION OF FINANCIAL INSTITUTIONS****§6-221. Authority of financial institution**

A financial institution may enter into a contract of deposit for a multiple-party account to the same extent as it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

§6-222. Payment on multiple-party account

A financial institution, on request, may pay sums on deposit in a multiple-party account to:

1. One or more of the parties. One or more of the parties, whether or not another party is disabled, incapacitated or deceased when payment is requested and whether or not the party making the request survives another party; or

2. Personal representative. The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under section 6-212.

§6-223. Payment on POD designation

A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

1. One or more of the parties. One or more of the parties, whether or not another party is disabled, incapacitated or deceased when the payment is requested and whether or not a party survives another party;

2. Beneficiaries. The beneficiary or beneficiaries if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

3. Personal representative. The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.

§6-224. Payment to designated agent

A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated or deceased when the request is made or received and whether or not the authority of the agent terminates on the disability or incapacity of a party.

§6-225. Payment to minor

If a financial institution is required or permitted to make payment pursuant to this Part to a minor designated as a beneficiary, payment may be made pursuant to the Maine Uniform Transfers to Minors Act.

§6-226. Discharge

1. Payments in accordance with terms of account. Payment made pursuant to this Part in accordance with the terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries or their successors. Payment may be made whether or not a party, beneficiary or agent is disabled, incapacitated or deceased when payment is requested, received or made.

2. Payments after receipt of notice. Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been

available to the financial institution affects its right to protection under this section.

3. Notice of dispute; refusal to make payments. A financial institution that receives written notice pursuant to this section that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

4. Rights of parties in disputes. Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

§6-227. Setoff

Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled under section 6-211 or, in the absence of proof of that proportion, an equal share with all parties.

PART 3

TRANSFER ON DEATH SECURITY REGISTRATION

§6-301. Definitions

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

1. Beneficiary form. "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

2. Register. "Register" means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

3. Registering entity. "Registering entity" means a person that originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

4. Security. "Security" means a share, participation or other interest in property, in a business or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security and a security account.

5. Security account. "Security account" means:

A. A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death; or

B. A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

§6-302. Registration in beneficiary form; sole or joint tenancy ownership

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by 2 or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship and not as tenants in common.

§6-303. Registration in beneficiary form; applicable law

A security may be registered in beneficiary form if the form is authorized by this Part or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of the registering entity's transfer agent or the registering entity's office making the registration or by this Part or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this Part or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

§6-304. Origination of registration in beneficiary form

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

§6-305. Form of registration in beneficiary form

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

§6-306. Effect of registration in beneficiary form

The designation of a transfer on death, or "TOD," beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A regis-

tration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

§6-307. Ownership on death of owner

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

§6-308. Protection of registering entity

1. Security registration in beneficiary form not required; protections. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Part.

2. Registration to be implemented on death. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Part.

3. Registering entity discharged from all claims; exceptions. A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner if the registering entity registers a transfer of the security in accordance with section 6-307 and does so in good faith reliance on:

A. The registration;

B. This Part; and

C. Information provided to the registering entity by affidavit of the personal representative of the deceased owner, by the surviving beneficiary or by the surviving beneficiary's representatives or other information available to the registering entity.

The protections of this Part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or

other information available to the registering entity affects its right to protection under this Part.

4. Rights of beneficiaries in disputes. The protection provided by this Part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

§6-309. Nontestamentary transfer on death

A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Part and is not testamentary.

§6-310. Terms, conditions and forms for registration

1. Terms and conditions. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests:

- A. For registrations in beneficiary form; and
- B. For implementation of registrations in beneficiary form, including requests for cancellation of previously registered transfer on death, or "TOD," beneficiary designations and requests for reregistration to effect a change of beneficiary.

The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries and substituting a named beneficiary's descendants to take the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

2. Forms. The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

- A. Sole owner - sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

- B. Multiple owners - sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.; and

- C. Multiple owners - primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.

§6-311. Application of Part

This Part applies to registrations of securities in beneficiary form made before, on or after July 1, 2019 by decedents dying on or after July 1, 2019.

PART 4

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

§6-401. Short title

This Part may be known and cited as "the Uniform Real Property Transfer on Death Act."

§6-402. Definitions

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

1. Beneficiary. "Beneficiary" means a person that receives property under a transfer on death deed.

2. Designated beneficiary. "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

3. Joint owner. "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. "Joint owner" includes a joint tenant. "Joint owner" does not include a tenant in common without a right of survivorship.

4. Person. "Person" means an individual, corporation, estate, trustee, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

5. Property. "Property" means an interest in real property located in this State that is transferable on the death of the owner.

6. Transfer on death deed. "Transfer on death deed" means a deed authorized under this Part.

7. Transferor. "Transferor" means an individual who makes a transfer on death deed.

§6-403. Applicability

This Part applies to a transfer on death deed made before, on or after July 1, 2019 by a transferor dying on or after July 1, 2019.

§6-404. Nonexclusivity

This Part does not affect any method of transferring property otherwise permitted under the law of this State.

§6-405. Transfer on death deed authorized

An individual may transfer for no consideration property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

§6-406. Transfer on death deed revocable

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

§6-407. Transfer on death deed nontestamentary

A transfer on death deed is nontestamentary.

§6-408. Capacity of transferor; undue influence of transferor

1. Capacity. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

2. Undue influence. In addition to any other criminal or civil causes of action or relief at law or equity, Title 33, chapter 20 applies to transfers under this Part.

§6-409. Requirements

A transfer on death deed:

1. Essential elements and formalities. Except as otherwise provided in subsection 2, must contain the essential elements and formalities of a properly recordable inter vivos deed;

2. Death of transferor. Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

3. Recorded before transferor's death. Must be recorded before the transferor's death in the public records in the registry of deeds in the county where the property is located.

§6-410. Notice, delivery, acceptance, consideration not required

A transfer on death deed is effective without:

1. Notice, delivery or acceptance. Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

2. Consideration. Consideration.

§6-411. Revocation by instrument authorized; revocation by act not permitted

1. Revocation by instrument. Subject to subsection 2, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

A. Is one of the following:

(1) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(2) An instrument of revocation that expressly revokes the deed or part of the deed; or

(3) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

B. Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the registry of deeds in the county where the deed is recorded.

2. More than one transferor. If a transfer on death deed is made by more than one transferor:

A. Revocation by a transferor does not affect the deed as to the interest of another transferor; and

B. A deed of joint owners is revoked only if it is revoked by all of the living joint owners.

3. Revocation after recorded. After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

4. Inter vivos transfer. As described in section 6-412, this section does not limit the effect of an inter vivos transfer of the property.

§6-412. Effect of transfer on death deed during transferor's life

During a transferor's life, a transfer on death deed does not:

1. Affect interest or right of transferor or other owner. Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

2. Affect interest or right of transferee. Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

3. Affect interest or right of creditor. Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

4. Affect eligibility or public assistance. Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

5. Create legal or equitable interest. Create a legal or equitable interest in favor of the designated beneficiary; or

6. Subject the property to claims or process. Subject the property to claims or process of a creditor of the designated beneficiary.

§6-413. Effect of transfer on death deed at transferor's death

1. Upon death of transferor. Except as otherwise provided in the transfer on death deed, in this section or in section 2-507, 2-603, 2-802 or 2-805 or in Article 2, Part 2, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death.

A. Subject to paragraph B, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

B. The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

C. Subject to paragraph D, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

D. If the transferor has identified 2 or more designated beneficiaries to receive concurrent interests in the property, the share of one that lapses or fails for any reason is transferred to the other or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

2. Subject to all interests. Subject to Title 33, section 201, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens and other interests to which the property is subject at the transferor's death. For purposes of this subsection and Title 33, section 201, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

3. Joint owner. If a transferor is a joint owner and is:

A. Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

B. The last surviving joint owner, the transfer on death deed is effective.

4. No covenant or warranty of title. A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

§6-414. Notice of death affidavit

A beneficiary who takes under a transfer on death deed may file for recording in the registry of deeds in the county where the real property is located a notice of death affidavit to confirm title following the death of the transferor. The notice of death affidavit must contain the name and address, if known, of each bene-

ficiary taking under the transfer on death deed, the street address of the property, the date of the transfer on death deed, the book and page number at which the transfer on death deed was recorded prior to the transferor's death, the name of the deceased transferor, the date and place of death and the name and address to which all future tax bills should be mailed. The affidavit must be notarized.

After recording the notice of death affidavit, the register of deeds shall return the original affidavit to the person who filed it and mail a copy of the affidavit to the tax assessor of the municipality where the property is located.

The filing of the notice of death affidavit is not a condition to the transfer of title.

§6-415. Disclaimer

A beneficiary may disclaim all or part of the beneficiary's interest as provided by Article 2, Part 9.

§6-416. Liability for creditor claims and statutory allowances

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in section 6-102.

§6-417. Optional form of transfer on death deed

The following form may be used to create a transfer on death deed. The other sections of this Part govern the effect of this or any other instrument used to create a transfer on death deed.

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. **YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.**

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

.....

.....

Printed name.....Mailing address

.....

Printed name.....Mailing address

Legal description of the property:

.....

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

.....
.....

Printed name.....Mailing address, if available

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

.....
.....

Printed name.....Mailing address, if available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

.....
(SEAL, if any).....

Signature.....Date.....

.....
(SEAL, if any).....

Signature.....Date.....

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.

How do I find the "legal description" of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the registry of deeds for the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed? Take the completed and acknowledged form to the registry of deeds of the county where the property is located. Follow the instructions given by the register of deeds to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each county where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each county where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

§6-418. Optional form of revocation

The following form may be used to create an instrument of revocation under this Part. The other sections of this Part govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

.....

.....

Printed name.....Mailing address

.....

Printed name.....Mailing address

Legal description of the property:

.....

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

.....

(SEAL, if any).....

Signature.....Date.....

.....

(SEAL, if any).....

Signature.....Date.....

ACKNOWLEDGMENT

(insert acknowledgment)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in the registry of deeds of each county where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be available in the registry of deeds for the county where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form? Take the completed and acknowledged form to the registry of deeds of the county where the property is located. Follow the in-

structions given by the register of deeds to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

§6-419. Uniformity of application and construction

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

§6-420. Relation to Electronic Signatures in Global and National Commerce Act

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001, et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b).

§6-421. Effective date

This Part takes effect July 1, 2019.

ARTICLE 7

TRUST ADMINISTRATION

PART 1

POWERS OF TRUSTEES

§7-101. Prohibitions and requirements applicable to trusts that are private foundations

1. Prohibited acts. In the administration of any trust that is a private foundation, as defined in Section 509 of the Internal Revenue Code of 1986, a charitable trust, as defined in Section 4947(a)(1) of the Internal Revenue Code of 1986, or a split-interest trust, as defined in Section 4947(a)(2) of the Internal Revenue Code of 1986, the following acts are prohibited:

A. Engaging in any act of self-dealing, as defined in Section 4941(d) of the Internal Revenue Code of 1986, that would give rise to any liability for the tax imposed by Section 4941(a) of the Internal Revenue Code of 1986;

B. Retaining any excess business holdings, as defined in Section 4943(c) of the Internal Revenue Code of 1986, that would give rise to any liability

for the tax imposed by Section 4943(a) of the Internal Revenue Code of 1986;

C. Making any investments that would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of Section 4944 of the Internal Revenue Code of 1986, so as to give rise to any liability for the tax imposed by Section 4944(a) of the Internal Revenue Code of 1986; and

D. Making any taxable expenditures, as defined in Section 4945(d) of the Internal Revenue Code of 1986, that would give rise to any liability for the tax imposed by Section 4945(a) of the Internal Revenue Code of 1986.

This section does not apply to split-interest trusts or to amounts of split-interest trusts that are not subject to the prohibitions applicable to private foundations by reason of the provisions of Section 4947 of the Internal Revenue Code of 1986.

2. Required distributions. In the administration of any trust that is a private foundation or a charitable trust, there must be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by Section 4942(a) of the Internal Revenue Code of 1986.

3. Exception, contrary to terms of trust. Subsections 1 and 2 do not apply to any trust to the extent that a court of competent jurisdiction determines that the application would be contrary to the terms of the instrument governing the trust and that the trust instrument may not properly be changed to conform to subsections 1 and 2.

4. Attorney General's powers. Nothing in this section impairs the rights and powers of the courts or the Attorney General of this State with respect to any trust.

5. Internal Revenue Code. All references to sections of the Internal Revenue Code of 1986 are deemed to include future amendments to the referenced sections and corresponding provisions of future internal revenue laws.

§7-102. Trustees authorized to invest trust funds in affiliated investments; limitations

1. Authorization. An association, corporation or financial institution authorized to exercise trust powers in this State while acting as a fiduciary is authorized to purchase for the fiduciary estate, directly from underwriters or distributors or in the secondary market, bonds or other securities underwritten or distributed by that association, corporation or financial institution or an affiliate or by a syndicate that includes that association, corporation or financial institution and securities of an investment company registered under the federal Investment Company Act of 1940, 15 United States

Code, Section 80a-1 et seq., as amended, for which that association, corporation or financial institution or an affiliate acts as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent or custodian. A person acting as a cofiduciary with an association, corporation or financial institution or an affiliate is authorized to consent to the investment in such interests.

2. Limitations. The authority granted pursuant to subsection 1 may not be exercised:

A. If the investment is prohibited by the instrument, judgment, decree or order creating the fiduciary relationship; or

B. Unless, in the case of cofiduciaries, the association, corporation or financial institution or an affiliate procures the consent of its cofiduciaries to the investment.

3. Disclosures. The disclosures required by this section must be provided by a statement or letter mailed to the last known address of each person to whom statements for the fiduciary estate are provided. The disclosures may be provided separately or as part of other documents of the fiduciary estate. If made part of other documents of the fiduciary estate, the disclosures must be printed clearly and conspicuously on those documents.

A. A trustee purchasing bonds or securities pursuant to this section shall disclose in writing all capacities in which the trustee or an affiliate acts for the issuer of those bonds or securities and that the trustee or an affiliate may have an interest in the underwriting or distribution of those bonds or securities.

B. If the securities purchased pursuant to subsection 1 are shares of an investment company subject to this section, the trustee shall disclose the services provided and the receipt of compensation for those services before the initial purchase and annually.

§7-103. Qualification of foreign trustee

A foreign corporate trustee is required to qualify as a foreign corporation doing business in this State if it maintains the principal place of administration of any trust within the State. A foreign cotrustee is not required to qualify in this State solely because its cotrustee maintains the principal place of administration in this State. Unless otherwise doing business in this State, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this State or maintain litigation. Nothing in this section affects a determination of what other acts require qualification as doing business in this State.

PART 2
COMMON TRUST FUNDS

§7-201. Definitions; establishment of common trust funds

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

A. "Common trust fund" means a trust or fund maintained by a bank or trust company exclusively for the collective investment or reinvestment of money contributed to the trust or fund by the bank or trust company, or an affiliated bank or trust company, as a fiduciary, including a trustee of a trust or fund for the primary purpose of paying employee benefits of any kind.

B. "Fiduciary" includes a trustee, executor, administrator, guardian and custodian under a uniform transfers to minors act.

2. Common trust funds. A bank or trust company qualified to act as fiduciary in this State may establish and operate common trust funds for the purpose of furnishing investments to itself as fiduciary or to itself and others as cofiduciaries, and for the purposes of furnishing investments to affiliated banks, within the meaning of Section 1504 of the Internal Revenue Code of 1986, acting for themselves and others as cofiduciaries, and the bank or trust company may, as the fiduciary or cofiduciary or acting for affiliated banks alone or with their cofiduciaries, invest funds lawfully held for investment in interests in common trust funds, if the investment is not prohibited by the instrument, judgment, decree or order creating the fiduciary relationship and if, in the case of cofiduciaries, the bank or trust company or affiliate procures the consent of its cofiduciaries to the investment. A person acting as a cofiduciary with the bank or trust company or affiliate is authorized to consent to the investment in the interests.

§7-202. Court accountings

Unless ordered by decree of the Superior Court, the bank or trust company operating common trust funds, referred to in this section as "the accountant," is not required to render a court accounting with regard to the funds, but the accountant may by petition to the Superior Court or the probate court in the county where the accountant has its principal place of business secure approval of the accounting on such conditions as the court may establish. Whenever a petition for the allowance of such an account is presented, the court having jurisdiction shall assign a time and place for hearing and shall cause public notice to be given by publication 3 weeks successively in a newspaper published in the county whose court has jurisdiction. In addition, the court shall, except to the extent as the several instruments creating the trusts participating in

the common trust fund provide otherwise, order personal notice upon all known beneficiaries of the participating trust estates who have a place of residence known to the accountant. Personal notice to known beneficiaries having a place of residence known to the accountant must be made by a written notice deposited in the mails addressed to each known beneficiary at the known place of residence at least 14 days before the time of hearing, or by a written notice either in hand or left at the known place of residence 14 days at least before the time of hearing. The method of service and the form of the notice must be as the court orders. "Place of residence known to the accountant" as used in this section includes only places of residence actually known to the accountant and does not include residences that could be discovered upon investigation but do not in the due course of business come to the actual knowledge of the accountant. The allowance of an account is conclusive as to all matters shown in the account upon all persons then or thereafter interested in the funds invested in the common trust funds.

§7-203. Application of Part

This Part applies to fiduciary relationships in existence on July 1, 2019 or established after that date.

PART 3

BANK AND TRUST COMPANY NOMINEES

§7-301. Registration in name of nominees

A state or national bank or trust company, when acting in this State as a fiduciary or cofiduciary with others, may with the consent of its cofiduciary or cofiduciaries, if any, who are authorized to give consent, cause an investment held in that capacity to be registered and held in the name of a nominee or nominees of the bank or trust company. The bank or trust company is liable for the acts of a nominee with respect to a registered investment. "Fiduciary" as used in this Part includes, but is not limited to, personal representatives, guardians, conservators, trustees, agents and custodians.

§7-302. Separate records

The records of a bank or trust company must at all times show the ownership of investments held in the name of nominees; such investments must be in the possession and control of the bank or trust company and must be kept separate and apart from the assets of the bank or trust company.

§7-303. Applicability of provisions

This Part governs fiduciaries and cofiduciaries acting under wills, agreements, court orders and other instruments existing on January 1, 1981 or made after that date. Nothing contained in this Part may be construed as authorizing a departure from or variation of the express words or limitations set forth in a will,

agreement, court order or other instrument creating or defining the fiduciary's duties and powers.

PART 4

UNIFORM PRINCIPAL AND INCOME ACT OF 1997

SUBPART 1

DEFINITIONS AND FIDUCIARY DUTIES

§7-401. Short title

This Part may be cited as the "Uniform Principal and Income Act of 1997."

§7-402. Definitions

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

1. Accounting period. "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. "Accounting period" includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

2. Beneficiary. "Beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

3. Fiduciary. "Fiduciary" means a personal representative or a trustee. "Fiduciary" includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

4. Income. "Income" means money or property that a fiduciary receives as current return from a principal asset. "Income" includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in subpart 4.

5. Income beneficiary. "Income beneficiary" means a person to whom net income of a trust is or may be payable.

6. Income interest. "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

7. Mandatory income interest. "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

8. Net income. "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this Part to or from income during the period.

9. Person. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

10. Principal. "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

11. Remainder beneficiary. "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

12. Terms of a trust. "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

13. Trustee. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

§7-403. Fiduciary duties; general principles

1. Allocating receipts and disbursements. In allocating receipts and disbursements to or between principal and income and with respect to any matter within the scope of subparts 2 and 3, a fiduciary:

A. Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this Part;

B. May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this Part;

C. Shall administer a trust or estate in accordance with this Part if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

D. Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this Part do not provide a method for allocating the receipt or disbursement to or between principal and income.

2. Fair and reasonable administration. In exercising the power to adjust under section 7-404, subsection 1 or a discretionary power of administration regarding a matter within the scope of this Part, whether granted by the terms of a trust, a will or this Part, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary favor or that the fiduciary may favor one

or more of the beneficiaries. A determination in accordance with this Part is presumed to be fair and reasonable to all of the beneficiaries.

§7-404. Trustee's power to adjust

1. Power to adjust between principal and income. A trustee may adjust between principal and income by allocating an amount of income to principal or an amount of principal to income to the extent the trustee considers appropriate if the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the provisions of section 7-403, subsection 1, that the trustee is unable to comply with section 7-403, subsection 2.

2. Factors. In deciding whether and to what extent to exercise the power conferred by subsection 1, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

A. The nature, purpose and expected duration of the trust;

B. The intent of the settlor;

C. The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;

D. The needs for liquidity, regularity of income and preservation and appreciation of capital;

E. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

F. The net amount allocated to income under the other sections of this Part and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

G. Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

H. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

I. The anticipated tax consequences of an adjustment.

3. Adjustments not permitted. A trustee may not make an adjustment under this section if any of the following applies:

A. The adjustment would diminish the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

B. The adjustment would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

C. The adjustment would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

D. The adjustment is from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust, unless both income and principal are so set aside;

E. The trustee's possession or exercise of the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

F. The trustee's possession or exercise of the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

G. The trustee is a beneficiary of the trust; or

H. The trust has been converted to a unitrust under section 7-405.

4. Cotrustees. If subsection 3, paragraph E, F or G applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from possessing or exercising the power to make the adjustment.

5. Release of power to adjust. A trustee may release the entire power conferred by subsection 1 or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result de-

scribed in subsection 3, paragraphs A to F or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection 3. The release of the power to adjust may be permanent or for a specified period, including a period measured by the life of an individual.

6. Terms of trust deny power of adjustment.

Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection 1.

§7-405. Power to convert to unitrust

1. Convert to unitrust; requirements. Unless expressly prohibited by the terms of the trust, a trustee may release the power to adjust under section 7-404 and convert a trust into a unitrust as described in this section if all of the following apply:

A. The trustee determines that the conversion will improve the ability of the trustee to carry out the intent of the settlor and the purposes of the trust;

B. The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to the following beneficiaries:

(1) All beneficiaries who are currently eligible to receive income from the trust; and

(2) All beneficiaries who would receive, if no power of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice;

C. There is at least one beneficiary eligible to receive income and at least one beneficiary who would receive principal as described in paragraph B; and

D. No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice required under paragraph B.

2. Petition to convert. If a beneficiary timely objects to the conversion to a unitrust under subsection 1 or if the requirements of subsection 1, paragraph C are not met, the trustee may petition the court to approve the conversion to a unitrust. A beneficiary may request a trustee to convert to a unitrust and, if the trustee does not convert, the beneficiary may petition the court to order the conversion. Upon receipt of a petition by the trustee or a beneficiary, the court shall approve the conversion or direct the requested conver-

sion if the court concludes that the conversion will better enable the trustee to carry out the intent of the settlor and the purposes of the trust.

3. Factors. In deciding whether to exercise the power conferred by subsection 1, a trustee shall consider the following factors to the extent they are relevant:

A. The nature, purpose and expected duration of the trust;

B. The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;

C. The needs for liquidity, regularity of income and preservation and appreciation of capital;

D. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary;

E. Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

F. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

G. The anticipated tax consequences of the conversion.

4. After conversion; requirements. After a trust is converted to a unitrust, all of the following apply:

A. The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital, from earnings and distributions from capital or from both;

B. The trustee shall make regular distributions in accordance with the terms of the trust construed in accordance with the provisions of this section; and

C. "Income" in the terms of the trust means an annual distribution, known as the "unitrust distribution," equal to 4%, known as the "payout percentage," of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this Part, averaged over the lesser of the 3 preceding years and the period during which the trust has been in existence.

5. Trustee's determination. The trustee of a unitrust subject to this section may in the trustee's discretion from time to time determine all of the following:

- A. The effective date of a conversion to a unitrust;
- B. The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payment commences or ceases;
- C. The frequency of unitrust distributions during the year;
- D. The effect of other payments from or contributions to the trust on the trust's valuation;
- E. Whether to value the trust's assets annually or more frequently;
- F. What valuation dates to use;
- G. How frequently to value nonliquid assets and whether to estimate their value;
- H. Whether to omit from the calculation of the unitrust distribution trust property occupied or possessed by a beneficiary; and
- I. Any other matters necessary for the proper functioning of the unitrust.

6. After conversion; allocation provisions. After a trust is converted to a unitrust, the following allocation provisions apply to the trust:

- A. Expenses that would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution; and
- B. Unless otherwise provided by the terms of the trust, the unitrust distribution must be paid from net income, as net income would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution must be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution must be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution must be paid from the principal of the trust.

7. Petition for changes. The trustee of a unitrust subject to this section or, if the trustee declines to do so, a beneficiary may petition the court to do any of the following:

- A. Select a payout percentage other than 4%;
- B. Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

C. Average the valuation of the trust's net assets over a period other than 3 years; or

D. Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 7-404 is revived.

8. Conversion does not affect certain trust provisions. A conversion to a unitrust does not affect a provision in the terms of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

9. Conversion not permitted. A trustee may not convert a trust into a unitrust if any of the following applies:

A. Payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

B. The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under a will or the terms of the trust unless both income and principal are so set aside;

C. The trustee's possession or exercise of the power to convert would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to convert;

D. The trustee's possession or exercise of the power to convert would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to convert;

E. The conversion would result in the disallowance of an estate tax or gift tax marital deduction that would be allowed if the trustee did not have the power to convert; or

F. The trustee is a beneficiary of the trust.

10. Conversion by cotrustee. If subsection 9, paragraph C, D or F applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from exercising the power to convert. If subsection 9, paragraph C, D

or F applies to all the trustees, the trustees may petition the court to direct a conversion.

11. Release of power to convert. A trustee may release the power conferred by subsection 1 to convert to a unitrust if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection 9, paragraph C, D or E or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection 9. The release of the power to convert to a unitrust may be permanent or for a specified period, including a period measured by the life of an individual.

§7-406. Judicial review of discretionary powers

1. Court determination of abuse of fiduciary's discretion. A court may not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this Part unless it determines that the decision was an abuse of the fiduciary's discretion. A court may not determine that a fiduciary abused the fiduciary's discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

2. Abuse of discretion; remedy. If a court determines that a fiduciary has abused the fiduciary's discretion in exercising a discretionary power conferred by this Part, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, according to the provisions of this subsection:

A. To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;

B. To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries or the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary or that beneficiary's estate to return some or all of the distribution to the trust, notwithstanding a spendthrift or similar provision;

C. If the abuse of discretion concerns the power to convert a trust into a unitrust, the court shall require the trustee either to convert the trust to a unitrust or to reconvert from a unitrust; and

D. To the extent that the court is unable, after applying paragraphs A, B and C, to restore the bene-

ficiaries or the trust, or both, to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, the court may require the fiduciary to pay an appropriate amount from the fiduciary's own funds to one or more of the beneficiaries or the trust, or both.

3. Proposed exercise or nonexercise of discretion; court determination. Upon a petition by the fiduciary, a court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this Part will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

SUBPART 2

DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

§7-421. Determination and distribution of net income

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the provisions of this section apply.

1. Determination of net income and net principal. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the provisions of subparts 3 to 5 that apply to trustees and the provisions of subsection 5. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

2. Requirements for determinations. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions of subparts 3 to 5 that apply to trustees and by:

A. Including in net income all income from property used to discharge liabilities;

B. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants and fiduciaries; court costs and other expenses of administration; and interest on death taxes; but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those

expenses from income will not cause the reduction or loss of the deduction; and

C. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, exempt property and allowances distributable pursuant to Article 2, Part 4 and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust or applicable law.

3. Distribution to beneficiary. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust or applicable law from net income determined under subsection 2 or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will under section 3-904.

4. Distribution to other beneficiary. A fiduciary shall distribute the net income remaining after distributions required by subsection 3 in the manner described in section 7-422 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

5. Reduction of principal or income receipts not permitted. A fiduciary may not reduce principal or income receipts from property described in subsection 1 because of a payment described in section 7-461 or 7-462 to the extent that the will, the terms of the trust or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a 3rd party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

§7-422. Distribution to residuary and remainder beneficiaries

1. Distribution based on fractional interest. Each beneficiary described in section 7-421, subsection 4 is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

2. Determination of share. In determining a beneficiary's share of net income, the provisions of this subsection apply:

A. The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations;

B. The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust;

C. The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation; and

D. The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

3. Records required if not all distributed. If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

4. Application of provisions. A fiduciary may apply the provisions of this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

SUBPART 3**APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST****§7-431. When right to income begins and ends**

1. Beginning of income interest. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

2. Asset subject to trust. An asset becomes subject to a trust:

A. On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

B. On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

C. On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a 3rd party because of the individual's death.

3. Successive income interest. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection 4, even if there is an intervening period of administration to wind up the preceding income interest.

4. Ending of income interest. An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

§7-432. Apportionment of receipts and disbursements when decedent dies or income interest begins

1. Application to principal. A trustee shall allocate an income receipt or disbursement other than one to which section 7-421, subsection 1 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

2. Application to income. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

3. Due date. An item of income or an obligation is due on the date the payor is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this Part. Distributions to shareholders or other owners from an entity to which section 7-441 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

§7-433. Apportionment when income interest ends

1. Undistributed income. As used in this section, "undistributed income" means net income received before the date on which an income interest ends. "Undistributed income" does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

2. End of mandatory income interest. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

3. Prorate final payment. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

SUBPART 4**ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST****§7-441. Character of receipts**

1. Entity. As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 7-442 applies, a business or activity to which section 7-443 applies or an asset-backed security to which section 7-455 applies.

2. Allocation to income; received from entity. Except as otherwise provided in this section, a trustee

shall allocate to income money received from an entity.

3. Allocation to principal; received from entity. A trustee shall allocate the following receipts from an entity to principal:

- A. Property other than money;
- B. Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
- C. Money received in total or partial liquidation of the entity; and
- D. Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

4. Money received in partial liquidation. Money is received in partial liquidation:

- A. To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or
- B. If the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

5. Money not received in partial liquidation. Money is not received in partial liquidation, nor may it be taken into account under subsection 4, paragraph B, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

6. Statement about source or character of distribution. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

§7-442. Distribution from trust or estate

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 7-441 or 7-455 applies to a receipt from the trust.

§7-443. Business and other activities conducted by trustee

1. Separate accounting for business or other activity. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

2. Net receipts used for business or other activity. A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

3. Separate accounting records activities. Activities for which a trustee may maintain separate accounting records include:

- A. Retail, manufacturing, service and other traditional business activities;
- B. Farming;
- C. Raising and selling livestock and other animals;
- D. Management of rental properties;
- E. Extraction of minerals and other natural resources;
- F. Timber operations; and
- G. Activities to which section 7-454 applies.

§7-444. Principal receipts

A trustee shall allocate to principal:

1. Assets received. To the extent not allocated to income under this Part, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest or a payor under a contract naming the trust or its trustee as beneficiary:

2. Received from sale, exchange, liquidation or change in form of asset. Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to this subpart:

3. Reimbursements because of disbursements. Amounts recovered from 3rd parties to reimburse the trust because of disbursements described in section 7-462, subsection 1, paragraph G or for other reasons to the extent not based on the loss of income;

4. Proceeds of property taken by eminent domain. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

5. Net income without beneficiary. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

6. Other receipts. Other receipts as provided in sections 7-448 to 7-455.

§7-445. Rental property

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

§7-446. Obligation to pay money

1. Interest on obligation to pay money; allocate to income. An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

2. Amount received from sale, redemption or other disposition of obligation to pay money; allocate to principal. A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

3. Not applicable. This section does not apply to an obligation to which section 7-449, 7-450, 7-451, 7-452, 7-454 or 7-455 applies.

§7-447. Insurance policies and similar contracts

1. Trust, trustee as beneficiary; allocate to principal. Except as otherwise provided in subsection 2, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

2. Loss of occupancy, use, income, business profits; allocate to income. A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income or, subject to section 7-443, loss of profits from a business.

3. Not applicable. This section does not apply to a contract to which section 7-449 applies.

§7-448. Insubstantial allocations not required

If a trustee determines that an allocation between principal and income required by section 7-449, 7-450, 7-451, 7-452 or 7-455 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in section 7-404, subsection 3 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 7-404, subsection 4 and may be released for the reasons and in the manner described in section 7-404, subsection 5. An allocation is presumed to be insubstantial if:

1. Increase or decrease of less than 10%. The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; or

2. Value of asset less than 10%. The value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

§7-449. Deferred compensation, annuities and similar payments

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

A. "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. "Payment" includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor. For the pur-

poses of subsections 4, 5, 6 and 7, "payment" also includes any payment from any separate fund, regardless of the reason for the payment.

B. "Separate fund" includes a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus or stock-ownership plan.

2. Payment is interest or dividend; allocate to income. To the extent that a payment is characterized as interest, a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

3. Payment not interest or dividend; allocation based on if required. If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

4. Payment qualifies for marital deduction. Except as otherwise provided in subsection 5, subsections 6 and 7 apply and subsections 2 and 3 do not apply in determining the allocation of a payment made from a separate fund to a trust:

A. That qualifies for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7) (2010), as amended, and for which either such an election has been made for federal purposes or for which an election under the pertinent provisions of the laws of the State to qualify as Maine qualified terminable interest property has been made; or

B. That qualifies for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(5) (2010), as amended.

5. Series of payments qualify for marital deduction. Subsections 4, 6 and 7 do not apply if and to the extent that the series of payments would, without the application of subsection 4, qualify for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7)(C) (2010), as amended.

6. Internal income of separate fund. A trustee shall determine the internal income of each separate

fund for the accounting period as if the separate fund were a trust subject to this Part. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

7. Value of separate fund. If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under the federal Internal Revenue Code, 26 United States Code, Section 7520 (2010), as amended, for the month preceding the accounting period for which the computation is made.

8. Not applicable. This section does not apply to a payment to which section 7-450 applies.

§7-450. Liquidating asset

1. Liquidating asset. As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. "Liquidating asset" includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. "Liquidating asset" does not include a payment subject to section 7-449, resources subject to section 7-451, timber subject to section 7-452, an activity subject to section 7-454, an asset subject to section 7-455 or any asset for which the trustee establishes a reserve for depreciation under section 7-463.

2. Allocation. A trustee shall allocate to income 10% of the receipts from a liquidating asset and the balance to principal.

§7-451. Minerals, water and other natural resources

1. Allocation of receipts. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

A. If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;

B. If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

C. If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, 90% must be allocated to principal and the balance to income; and

D. If an amount is received from a working interest or any other interest not provided for in paragraph A, B or C, 90% of the net amount received must be allocated to principal and the balance to income.

2. Allocation from interest in water. An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90% of the amount must be allocated to principal and the balance to income.

3. Timing of extractions. This Part applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

4. Pre-2002 ownership. If a trust owns an interest in minerals, water or other natural resources on January 1, 2002, the trustee may allocate receipts from the interest as provided in this Part or in the manner used by the trustee before January 1, 2002. If the trust acquires an interest in minerals, water or other natural resources after January 1, 2002, the trustee shall allocate receipts from the interest as provided in this Part.

§7-452. Timber

1. Allocation of net receipts. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

A. To income to the extent the net receipts do not exceed the product of mean annual growth multiplied by the number of years since the last timber sale, or, if more recent, the date the timber became a part of the trust, multiplied by the stumpage rates obtained, after netting against the stumpage rates obtained the expenses associated with the conduct of the sale;

B. To principal to the extent that the proceeds received exceed the amount determined in paragraph A;

C. To or between income and principal if the net receipts are from the lease of timberland or from a

contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the provisions of paragraphs A and B; or

D. To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph A, B or C.

2. Deduction for depletion. In determining net receipts to be allocated pursuant to subsection 1, a trustee may deduct and transfer to principal a reasonable amount for depletion.

3. Timing of timber harvests. This section applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

4. Pre-2003 ownership. If a trust owns an interest in timberland on January 1, 2003, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in timberland after January 1, 2003, the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

5. Mean annual growth. For purposes of this section, "mean annual growth" means, at the trustee's option, either:

A. The mean annual increment of growth of the timber involved as determined by a licensed professional forester; or

B. Forty-five hundredths of a cord per acre of woodland.

§7-453. Property not productive of income

1. Income to obtain marital deduction. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 7-404 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power conferred by section 7-404, subsection 1. The trustee may decide which action or combination of actions to take.

2. Proceeds otherwise are principal. In cases not governed by subsection 1, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

§7-454. Derivatives and options

1. Derivative. As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

2. Allocation to principal. To the extent that a trustee does not account under section 7-443 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

3. Options to buy or sell property; paid from or allocated to principal. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

§7-455. Asset-backed securities

1. Asset-backed security. As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. "Asset-backed security" includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 7-441 or 7-449 applies.

2. Payment from interest or current return; allocate to income. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payor identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

3. Payments for trust's interest; allocate to income and principal. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security

over more than one accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

SUBPART 5**ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST****§7-461. Disbursements from income**

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 7-421, subsection 2, paragraph B or C applies:

1. Compensation. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

2. Expenses; income and remainder interests. One-half of all expenses for accountings, judicial proceedings or other matters that involve both the income and remainder interests;

3. Other ordinary expenses. All of the ordinary expenses other than those specified in subsections 1 and 2 incurred in connection with the administration, management or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal and expenses of a proceeding or other matter that concerns primarily the income interest; and

4. Recurring premiums. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

§7-462. Disbursements from principal

1. Required disbursements. A trustee shall make the following disbursements from principal:

A. The remaining 1/2 of the disbursements described in section 7-461, subsections 1 and 2;

B. All of the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination and disbursements made to prepare property for sale;

C. Payments on the principal of a trust debt;

D. Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

E. Premiums paid on a policy of insurance not described in section 7-461, subsection 4 of which the trust is the owner and beneficiary;

F. Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and

G. Disbursements related to environmental matters, including reclamation, assessing environ-

mental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by 3rd parties and defending claims based on environmental matters.

2. Encumbered principal asset; transfer to income. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

§7-463. Transfers from income to principal for depreciation

1. Depreciation. As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year.

2. Reasonable amount of net cash receipts. A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer for depreciation any amount:

A. Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

B. During the administration of a decedent's estate; or

C. Under this section if the trustee is accounting under section 7-443 for the business or activity in which the asset is used.

3. Separate fund not required. An amount transferred to principal pursuant to subsection 2 need not be held as a separate fund.

§7-464. Transfers from income to reimburse principal

1. Transfer to reimburse or provide reserve. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

2. Applicable principal disbursement. Principal disbursements to which subsection 1 applies include the following, but only to the extent that the

trustee has not been and does not expect to be reimbursed by a 3rd party:

A. An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

B. A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

C. Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions;

D. Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

E. Disbursements described in section 7-462, subsection 1, paragraph G.

3. Successive income interest. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection 1.

§7-465. Income taxes

1. Tax based on receipts allocated to income.

A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

2. Tax based on receipts allocated to principal.

A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

3. Tax on trust's share of entity's taxable income. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

A. From income to the extent that receipts from the entity are allocated only to income;

B. From principal to the extent that receipts from the entity are allocated only to principal;

C. Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

D. From principal to the extent that the tax exceeds the total receipts from the entity.

4. Adjustments because of deduction for payments to beneficiary. After applying subsections 1 to 3, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

§7-466. Adjustments between principal and income because of taxes

1. Adjustments to offset shifting of interests or benefits. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

A. Elections and decisions, other than those described in subsection 2, that the fiduciary makes from time to time regarding tax matters;

B. An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

C. The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary.

2. Increase in estate tax, reduction in income taxes. If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

SUBPART 6**MISCELLANEOUS PROVISIONS****§7-471. Uniformity of application and construction**

In applying and construing this Part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§7-472. Application of Part to all trusts and estates

This Part applies to every trust or decedent's estate, including those in existence on July 1, 2019, beginning with the first fiscal year of the trust or decedent's estate that begins on or after July 1, 2019, except as otherwise expressly provided in the will or terms of the trust or in this Part.

ARTICLE 8**MISCELLANEOUS PROVISIONS****PART 1****RECEIVERSHIPS FOR MISSING AND ABSENT PERSONS****§8-101. Estates of absentees; petition**

If a person entitled to or having an interest in property within the jurisdiction of the State has disappeared or absconded from the place within or outside the State where the person was last known to be, has no agent in the State and it is not known where the person is, or if a person, having a spouse or minor child dependent to any extent upon the person for support, has disappeared or absconded without making sufficient provision for support and it is not known where the person is, or, if it is known that the person is outside the State, anyone who would under the law of the State be entitled to administer the estate of the absentee if the absentee were deceased may file a petition under oath in the court for the county where the property is situated. The petition must state the name, age, occupation and last known residence or address of the absentee, the date and circumstances of the disappearance and the names and residences of other persons, whether members of the absentee's family or otherwise, of whom inquiry may be made. The petition must also contain a schedule of the absentee's known property, real and personal, and its location within the State and request that such property be taken possession of and a receiver appointed under this Part.

§8-102. Warrant

Upon receipt of a petition under section 8-101, the court may issue a warrant, which may run throughout the State, directed to the public administrator in the county where the property or some of it is situated, commanding the public administrator to take possession of the property listed in the schedule and expeditiously make return of the warrant with a schedule of the property taken. The public administrator shall cause any portion of the warrant relating to land to be recorded in the registry of deeds for the county where the land is located. The public administrator is entitled to the fees allowed by the court for serving the warrant, but may not receive more than those established by law for similar service upon a writ of attachment. The fees and the costs of publishing and serving the notice must be paid by the petitioner. If a receiver is appointed under section 8-105, the fees must be repaid by the receiver to the petitioner and the receiver may be compensated for these fees under section 8-112.

§8-103. Notice

Upon the return of a warrant issued under section 8-102, the court shall issue a notice reciting the substance of the petition, warrant and return, which must

be addressed to the absentee, to all persons who claim an interest in the absentee's property and to all whom it may concern, ordering them to appear at a time and place named and show cause why a receiver of the property should not be appointed to hold and dispose of the property listed in the schedule under this Part.

§8-104. Publication

The return day may not be less than 30 days nor more than 60 days after the date of the notice. The court shall order the notice to be published once in each of 3 successive weeks in one or more newspapers within the county in which the petition was filed under section 8-101 and a copy of the notice to be mailed to the last known address of the absentee. The court may order additional and alternative notice to be given within or outside the State.

§8-105. Hearing; appointment of receiver of property; bond

The absentee or a person who claims an interest in any of the property may appear and show cause why the petition should not be granted. The court may, after hearing, dismiss the petition and order that the property in possession of the public administrator be returned to the person entitled to the property or it may appoint as receiver a person who, under the law of the State, is entitled to administer the estate of the absentee if the absentee were deceased or, if no eligible person is known or if all eligible persons decline to serve, the court may appoint the public administrator as receiver of the property in the possession of the public administrator and named in the schedule. If a receiver is appointed, the court shall find and record the date of the absentee's disappearance or absconding and the receiver shall give bond to the State of Maine in a sum and under the conditions ordered by the court.

§8-106. Possession by receiver

After approval of a bond under section 8-105, the court may order the public administrator to transfer and deliver to the receiver possession of the property under the warrant. The receiver shall file a schedule of the property received in the registry of probate.

§8-107. Collection of debts

In addition to property transferred to the receiver under section 8-106, the receiver shall take possession of any other property within the State that belongs to the absentee and demand and collect all debts due the absentee from any person in the State and hold the same as if it had been transferred and delivered to the receiver by the public administrator. If the receiver takes any additional real estate, the receiver shall file a certificate describing the real estate with the register of deeds for the county where the real estate is located.

§8-108. Appointment of receiver for absentee's debts

If an absentee has left no corporeal property within the State, but there are debts or obligations due or owing the absentee from persons in the State, a petition may be filed as provided in section 8-101, stating the nature and amount of the absentee's known debts and obligations and praying that a receiver may be appointed. Upon receipt of the petition, the court may issue a notice as provided in section 8-103 without issuing a warrant and may, upon the return of the notice and after a hearing, dismiss the petition or appoint a receiver and authorize and direct the receiver to demand and collect the absentee's debts and obligations. The receiver shall give bond as provided in section 8-105 and shall hold the proceeds of the absentee's debts and obligations and all property received by the receiver and distribute the same as provided in this Part.

§8-109. Perishable goods

The court may make orders for the care, custody, leasing and investing of all property and its proceeds in the possession of the receiver. If any of the property consists of live animals or is perishable or cannot be kept without great or disproportionate expense, the court may, after the return of the warrant, order the property to be sold at public or private sale. Upon petition of the receiver, the court may order all or part of the property, including the absentee's rights in land, to be sold at public or private sale to supply money for payments authorized by this Part or for reinvestment approved by the court.

§8-110. Support of dependents

The court may order the absentee's property or its proceeds acquired by mortgage, lease or sale to be applied in payment of expenses incurred or that may be incurred to support and maintain the absentee's spouse and dependent children and to discharge any debts and claims for spousal support proved against the absentee.

§8-111. Arbitration of claims

The court may authorize the receiver appointed under section 8-108 to adjust by arbitration or compromise any demand in favor of or against the absentee's estate.

§8-112. Compensation; cessation of duties

The receiver appointed under section 8-108 may receive compensation and disbursements ordered by the court, to be paid out of the absentee's property or proceeds. If, within 8 years after the date of the disappearance or absconding found by the court under section 8-105, the absentee appears or a personal representative, assignee in insolvency or trustee in bankruptcy of the absentee is appointed, the receiver shall account for, deliver and pay over the remainder of the

absentee's property. If the absentee does not appear and claim the absentee's property within 8 years, all of the absentee's right, title and interest in the property, real or personal, or the proceeds thereof, ceases, and no action may be brought by the absentee.

§8-113. Termination of receivership

If at the expiration of 8 years after the date of the disappearance or absconding found by the court under section 8-105, the absentee's property has not been accounted for, delivered or paid over under section 8-112, the court shall order distribution of the remainder to the persons to whom, and in the shares and proportions in which, the absentee's property would have been distributed if the absentee had died intestate within the State on the day 8 years after the date of the disappearance or absconding. The receiver shall deduct from the share of each distributee and pay to the State Tax Assessor the amount each distributee would have paid in an inheritance tax to the State if the distributee had received the property by inheritance from a deceased resident of the State.

§8-114. Limitations

Notwithstanding sections 8-112 and 8-113, if a receiver is not appointed within 7 years after the date of disappearance or absconding found by the court under section 8-105, the time limited to accounting for, or fixed for distributing, the absentee's property or its proceeds, or for barring actions relative thereto, is one year after the date of the appointment of a receiver.

PART 2

PROCEDURES GOVERNING BONDS

§8-201. Applicability to proceedings on other bonds

Except as otherwise provided by law, and whenever the provisions of this Part are applicable, proceedings, judgment and execution on the bonds given to the State of Maine or the court by personal representatives, guardians, conservators, trustees, surviving partners, assignees of insolvent debtors and others must be conducted in the manner provided in this Part.

§8-202. Surety on bond may cite trust officers for accounting

Whenever a surety on a bond has reason to believe that the trust officer has depleted or is wasting or mismanaging the estate, the surety may cite the trust officer before the court as provided in section 3-110. If upon hearing the court is satisfied that the estate held in trust by the trust officer has been depleted, wasted or mismanaged, the court may remove the trust officer and appoint a new trust officer.

§8-203. Agreement with sureties for joint control

It is lawful for any party of whom a bond, undertaking or other obligation is required to agree with the surety or sureties for the deposit of any or all money and assets for which the party and the surety or sureties are or may be held responsible with a national bank, savings bank, safe-deposit company or trust company authorized by law to do business in this State or with another depository approved by the court having jurisdiction over the trust or undertaking for which the bond is required if such deposit is otherwise proper and in a manner that prevents the withdrawal of the money or assets or any part thereof without the written consent of the surety or sureties or an order of the court made on such notice to the surety or sureties as the court may direct. Such agreement does not in any manner release from or change the liability of the principal or sureties under the terms of the bond.

§8-204. Approval of bond by judge

Except as otherwise provided by sections 3-603 to 3-606, 4-204, 4-207, 5-125, 5-415 and 5-416 and Title 18-B, section 702, a bond required to be given to the State of Maine or the court or to be filed in the probate office is insufficient until it has been examined by the court and approved by the court in writing.

§8-205. Insufficient sureties

When the sureties in a bond under section 8-204 are insufficient, the court, on petition of any person interested and with notice to the principal, may require a new bond with sureties approved by the court.

§8-206. Discharge of surety

On application of any surety or principal of a bond under this Part, the court, after notice to all parties interested, may discharge the surety or sureties from all liability for any subsequent breach but not for any prior breaches and may require a new bond of the principal with sureties approved by the court.

§8-207. New bonds or removal of principal

In proceedings under sections 8-205 and 8-206, if the principal does not give a new bond within the time ordered by the court, the principal must be removed and another appointed.

§8-208. Reduction of liability where signed by surety company

If a surety company becomes surety on a bond given to the State of Maine, the court may, upon petition of any party in interest and after notice to all interested parties, reduce the amount for which the principal and surety are liable for a subsequent violation of the conditions of the bond.

§8-209. Actions on bonds

Actions or proceedings on probate bonds of any kind payable to the State of Maine or the court may be

commenced by any person interested in the estate or other matter for which the bond was given, either in the probate court in which the bond was filed or in the Superior Court of the county in which the bond was filed.

§8-210. Principal made party in action against surety

If the principal of the bond resides in the State when an action is brought under section 8-209, and is not made a party to the action, or if at the trial or on proceedings on a judgment against the sureties only the principal is in the State, the court, at the request of any such surety, may postpone or continue the action long enough to summon or bring the principal into court.

§8-211. Proceedings and judgment

With approval of the court after a continuance is issued under section 8-210, the surety may request a writ, in the form prescribed by the court, to arrest the principal, if liable to arrest, or to attach the principal's estate and summon the principal to appear and answer as a defendant in the action. If, 14 days after service of the writ, the principal fails to appear at the time appointed and judgment is rendered for the plaintiff, the judgment must be against the principal and the other defendants as if the principal had been a party. Any attachment made on the writ may be used to satisfy the judgment as if the attachment had been issued in the original action.

§8-212. Limitation of actions on bonds

Except in the case of personal representatives provided for under sections 3-1005 and 3-1007, and whenever applicable under section 8-201, an action on a bond must be commenced within 6 years after the principal has been cited by the court to appear to settle the account or, if not cited, within 6 years from the time of the breach of the bond, unless the breach is fraudulently concealed by the principal or surety from the persons pecuniarily interested and who are parties to the action, in which case the action must be commenced within 3 years from the time the breach is discovered.

§8-213. Judicial authorization of actions

The court may expressly authorize or instruct a personal representative or other fiduciary, on the court's own initiative or on the complaint of any interested person, to commence an action on the bond for the benefit of the estate. Nothing in this section may be deemed to limit the power or duty of a successor fiduciary to bring proceedings the fiduciary is authorized to bring without express court authorization under section 3-606, subsection 1, paragraph D; section 5-417, subsection 1, paragraph C; Title 18-B, section 702; or any other provision of law.

§8-214. Forfeiture for failure to account when ordered

When it appears in an action on a bond against a principal that the principal is unable to account for personal property of the estate that the principal has received, execution must be awarded against the principal for the full value of the unaccounted-for property, without any allowance for charges of administration or debts paid.

§8-215. Judgment in trust for all interested

Every judgment and execution in an action on the bond must be recovered by the court in trust for all interested parties. The judge shall order the delinquent fiduciary, if still in office, to account for the amount or to assign the amount to the fiduciary's successor to be collected and distributed or otherwise disposed of as assets.

PART 3

EFFECTIVE DATE

§8-301. Time of taking effect; provisions for transition

1. Effective date. This Code takes effect on July 1, 2019.

2. Applicability. Except as provided elsewhere in this Code, on the effective date of this Code:

A. The Code applies to any wills of decedents who die after the effective date;

B. The Code applies to any proceedings in court pending on the effective date or commenced after the effective date regardless of the time of the death of the decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;

C. Every personal representative appointed prior to July 1, 2019 continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done after the effective date, and a guardian or conservator appointed prior to July 1, 2019 has the powers conferred by this Code on guardians and conservators, unless otherwise limited by the original order of appointment or subsequent court order under this Code;

D. An act done before July 1, 2019 in any proceeding and any accrued right is not impaired by this Code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before July 1, 2019, the provisions remain in force with respect to that right;

E. Any rule of construction or presumption provided in this Code applies to instruments executed and multiple party accounts opened before July 1, 2019 unless there is a clear indication of a contrary intent; and

F. For an adoption decree entered before July 1, 2019 and not amended after July 1, 2019, the child is the child of both the former and adopting parents for purposes of intestate succession, notwithstanding section 2-117, unless the decree provides otherwise.

ARTICLE 9

ADOPTION

PART 1

GENERAL PROVISIONS

§9-101. Short title

This Article may be known and cited as "the Adoption Act."

§9-102. Definitions

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

1. Adoptee. "Adoptee" means a person who will be or who has been adopted, regardless of whether the person is a child or an adult.

2. Adult. "Adult" means a person who is 18 years of age or older.

3. Child. "Child" means a person who is under 18 years of age.

4. Consent. "Consent," used as a noun, means a voluntary agreement to an adoption by a specific petitioner that is executed by a parent or custodian of the adoptee.

5. Department. "Department" means the Department of Health and Human Services.

6. Licensed child-placing agency. "Licensed child-placing agency" means an agency, person, group of persons, organization, association or society licensed to operate in this State pursuant to Title 22, chapter 1671.

7. Parent. "Parent" means a person who, with respect to a child:

A. Has established parentage pursuant to Title 19-A, chapter 61; or

B. When no person described in paragraph A exists, is the legal guardian of the child.

8. Petitioner. "Petitioner" means a person filing a petition to adopt an adult or a child, and includes both petitioners under a joint petition, except as otherwise provided in this Article.

9. Putative parent. "Putative parent" means a person who is the alleged parent of a child but whose parentage has not been but may be legally determined in accordance with Title 19-A, chapter 61.

10. Surrender and release. "Surrender and release," used as a noun, means a voluntary relinquishment of all parental rights to a child to the department or a licensed child-placing agency for the purpose of placement for adoption.

§9-103. Jurisdiction

1. Probate Court jurisdiction. Subject to Title 4, section 152, subsection 5-A, the Probate Court has exclusive jurisdiction over the following:

A. Petitions for adoption;

B. Consents and reviews of withholdings of consent by persons other than a parent;

C. Surrenders and releases;

D. Termination of parental rights proceedings brought pursuant to section 9-204;

E. Proceedings to determine the rights of putative parents of children whose adoptions or surrenders and releases are pending before the Probate Court; and

F. Reviews conducted pursuant to section 9-205.

2. District Court jurisdiction. The District Court has jurisdiction to conduct hearings pursuant to section 9-205. The District Court has jurisdiction over any matter described in subsection 1 if the proceeding concerns a child over whom the District Court has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

§9-104. Venue; transfer

1. Venue if adoptee placed by agency or department. If an adoptee is placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the court in the county or division where:

A. The petitioner resides;

B. The adoptee resides or was born;

C. An office of the agency that placed the adoptee for adoption is located; or

D. Parental rights of the minor adoptee's parents have been terminated.

2. Venue if agency or department not involved in placement. If an adoptee is not placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the county or division where the adoptee resides or where the petitioners reside.

3. Transfer. If, in the interests of justice or for the convenience of the parties, the court finds that the matter should be heard in another court, the court may transfer, stay or dismiss the proceeding, subject to any further conditions imposed by the court.

§9-105. Rights of adopted persons

Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, that a child born to the adoptive parents would have. An adoptee also retains the right to inherit from the adoptee's former parents if the adoption decree so provides, as specified in section 2-117.

§9-106. Legal representation

1. Attorney for parents. The parents are entitled to an attorney for any hearing held pursuant to this Article. If a parent or putative parent wants an attorney but is unable to afford one, the parent or the putative parent may request the court to appoint an attorney. If the court finds the requesting party indigent, the court shall appoint and pay the reasonable costs and expenses of the attorney of the indigent party. The attorney may not be the attorney for the adoptive parents.

2. Attorney for minor indigent parent. When the adoptee is unrelated to the petitioner, the court shall appoint an attorney who is not the attorney for the adoptive parents to represent a minor indigent parent at every stage of the proceedings unless the minor indigent parent refuses representation or the court determines that representation is unnecessary.

§9-107. Indian Child Welfare Act of 1978

The federal Indian Child Welfare Act of 1978, United States Code, Title 25, Section 1901 et seq. governs all proceedings under this Article that pertain to an Indian child as defined in that Act.

§9-108. Application of prior laws

The laws in effect on June 30, 2019 apply to proceedings for which any of the following occurred before July 1, 2019:

- 1. Consent.** The filing of a consent;
- 2. Surrender and release.** The filing of a surrender and release;
- 3. Waiver of notice.** The filing of a waiver of notice by a parent or putative parent under former Title 19, section 532-C;
- 4. Order terminating parental rights.** The issuance of an order terminating parental rights; or
- 5. Adoption petition.** The filing of a petition for adoption.

§9-109. Mediation

The court may refer the parties to mediation at any time after a petition is filed if mediation services are available at a reasonable fee or no cost, and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

PART 2

DETERMINATION OF PARENTAGE AND TERMINATION OF PARENTAL RIGHTS

§9-201. Determination of parentage

1. Affidavit of parentage. When a parent of a child wishes to consent to the adoption of the child or to execute a surrender and release for the purpose of adoption of the child and a putative parent has not consented to the adoption of the child or joined in a surrender and release for the purpose of adoption of the child or waived the right to notice, the parent must file an affidavit of parentage with the court so that the court may determine how to give notice of the proceedings to the putative parent.

2. Notice of intent to consent or execute surrender and release. If a court finds from the affidavit of the parent submitted pursuant to subsection 1 that the putative parent's whereabouts are known, the court shall order that notice of the parent's intent to consent to adoption or to execute a surrender and release, or the parent's actual consent or surrender and release, for the purpose of adoption of the child, be served upon the putative parent. If the court finds that the putative parent's whereabouts are unknown, the court shall order notice by publication in accordance with the applicable rules of procedure. If the parent does not know or refuses to tell the court who a putative parent is, the court may order publication in accordance with the applicable rules of procedure in a newspaper of general circulation in the area where the petition is filed, where the child was conceived or where the putative parent is most likely to be located. The notice must specify the names of the parent and the child.

3. Waiver of notice. A putative parent may waive the right to notice under this section in a document acknowledged before a notary public or a judge. The notary public may not be an attorney who represents either the parent or any person who is likely to become the legal guardian, custodian or parent of the child.

A. The waiver of notice must indicate that the putative parent understands that the waiver of notice operates as a consent to adoption or a surrender and release for the purposes of adoption for any adoption of the child and that by signing the

waiver of notice the putative parent voluntarily gives up any rights to the child.

B. The waiver of notice may state that the putative parent neither admits nor denies parentage.

4. Determination of parentage of putative parent. If, after notice, the putative parent of the child wishes to establish parentage of the child, the putative parent must, within 20 days after notice has been given or within a longer period of time as ordered by the court, petition the court to initiate proceedings to establish parentage under Title 19-A, chapter 61.

5. Hearing date. Upon receipt of a petition under subsection 4, the court shall fix a date for a hearing to determine the putative parent's parentage of the child.

6. Appointment of attorneys. The court shall appoint an attorney who is not the attorney for the putative parent, the parent or the potential transferee agency or a potential adoptive parent to represent the child and to protect the child's interests in the proceedings under this section.

7. Notice of hearing. Notice of a hearing under this section must be given to a parent, a putative parent, the attorney for the child and any other parties the court determines appropriate. Notice need not be given to a putative parent who has waived the right to notice as provided in subsection 3.

8. Studies and reports. Upon order of the court, the department or licensed child-placing agency shall furnish studies and reports relevant to the proceedings under this section.

9. Findings; effect of parent not waiving notice. If the putative parent is determined to be the child's parent pursuant to one or more of the means of establishing parentage under Title 19-A, chapter 61, and does not execute a waiver of notice pursuant to subsection 3, then a petitioner must bring a petition to terminate the parent's parental rights pursuant to section 9-204 if the petitioner proceeds with the adoption.

10. Findings; putative parent does not seek to establish or establish parentage of the child. If the putative parent does not bring a petition to establish parentage under subsection 4 or does not establish parentage of the child under Title 19-A, chapter 61, the court shall rule that the putative parent's consent or surrender and release is not needed for the adoption.

§9-202. Surrender and release; consent

1. Surrender and release or consent; presence of judge. With the approval of the court of any county within the State and after a determination by the court that a surrender and release or a consent is in the best interest of the child, the parents or surviving parent of a child may at any time at least 72 hours after the child's birth:

A. Surrender and release all parental rights to the child and the custody and control of the child to a licensed child-placing agency or the department to enable the licensed child-placing agency or the department to have the child adopted by a suitable person; or

B. Consent to have the child adopted by a specified petitioner.

The parents or the surviving parent must execute the surrender and release or the consent in the presence of the judge. The adoptee, if 14 years of age or older, must execute the consent in the presence of the judge. The waiver of notice by the putative parent is governed by section 9-201, subsection 3.

2. Approval of surrender and release or consent. The court may approve a surrender and release or a consent only if:

A. A licensed child-placing agency or the department certifies to the court that counseling was provided or was offered and refused. This requirement does not apply if:

(1) One of the petitioners is a blood relative; or

(2) The adoptee is an adult;

B. The court has explained the individual's parental rights and responsibilities, the effects of the surrender and release or the consent, that in all but specific situations the individual has the right to revoke the surrender and release or consent within 5 working days and the existence of the adoption registry and the services available under Title 22, section 2706-A. The individual does not have the right to revoke the consent when the individual is a consenting party and also a petitioner;

C. The court determines that the surrender and release or the consent has been duly executed and was given freely after the parent was informed of the parent's rights; and

D. Except when a consenting party is also a petitioner, at least 5 working days have elapsed since the parents or parent executed the surrender and release or the consent and the parents or parent did not withdraw or revoke the surrender and release or consent before the judge or, if the judge was not available, before the register.

3. Original; copies. The original surrender and release or consent must be filed in the court where the surrender and release or the consent is executed. An attested copy of the surrender and release or consent must be filed in the court in which the petition is filed. The court in which the surrender and release or the consent is executed shall provide an attested copy to each surrendering or consenting party and an attested copy to the transferring agency. The copy given to the

surrendering or consenting party must contain a statement explaining the importance of keeping the court informed of a current name and address.

4. Valid after 5 days; exception. A surrender and release or a consent is not valid until 5 working days after it has been executed, except that consent by a parent petitioning to adopt that parent's own child with that parent's spouse is valid upon signature.

5. Consent acknowledged. Consent may be acknowledged before a notary public who is not an attorney for the adopting parents or a partner, associate or employee of an attorney for the adopting parents when consent is given by:

A. The department or a licensed child-placing agency; or

B. A public agency or a duly licensed private agency to which parental rights have been transferred under the law of another state or country.

6. Final and irrevocable; exceptions. Except as provided in subsection 7 and section 9-205, subsection 2, a surrender and release or a consent is final and irrevocable when duly executed.

7. Consent; limitations. A consent is final only for the adoption consented to, and if that petition for adoption is withdrawn or dismissed or if the adoption is not finalized within 18 months of the execution of the consent, a review must be held pursuant to section 9-205.

8. Surrender and release or consent from another state. The court shall accept a surrender and release or a consent by a court of comparable jurisdiction in another state if the court receives an affidavit from a member of that state's bar or a certificate from that court of comparable jurisdiction stating that:

A. The party executing the surrender and release or the consent followed the procedure required to make a surrender and release or a consent valid in the state in which it was executed; and

B. The court of comparable jurisdiction advised the person executing the surrender and release or the consent of the consequences of the surrender and release or the consent under the laws of the state in which the surrender and release or the consent was executed.

The court shall accept a waiver of notice by a putative parent that meets the requirements of section 9-201, subsection 3.

§9-203. Duties and responsibilities subsequent to surrender and release

Without notice to the parent or parents, the surrender and release authorized pursuant to section 9-202 may be transferred together with all rights under section 9-202 from the transferee agency to the de-

partment or from the department as original transferee to any licensed child-placing agency. If the licensed child-placing agency or the department is unable to find a suitable adoptive home for a child surrendered and released by a parent or parents, the licensed child-placing agency or the department to whom custody and control of that child have been surrendered and released or transferred shall request a review pursuant to section 9-205.

§9-204. Termination of parental rights

1. Petition for termination; adoption petition brought solely by parent. A petition for termination of parental rights may be brought in the court in which a petition for adoption is properly filed as part of that petition for adoption. A petition for termination of parental rights may not be included as part of a petition for adoption brought solely by another parent of the child unless the adoption is sought to confirm the parentage status of the petitioning parent.

2. Title 22, chapter 1071, subchapter 6 applies. Except as otherwise provided by this section, a termination of parental rights petition is subject to the provisions of Title 22, chapter 1071, subchapter 6.

3. Grounds for Termination. The court may order termination of parental rights if:

A. The parent consents to the termination. Consent must be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

B. The court finds, based on clear and convincing evidence, that:

(1) Termination is in the best interest of the child; and

(2) Either:

(a) The parent is unwilling or unable to protect the child from jeopardy, as defined by Title 22, section 4002, subsection 6, and these circumstances are unlikely to change within a time that is reasonably calculated to meet the child's needs;

(b) The parent has been unwilling or unable to take responsibility for the child within a time that is reasonably calculated to meet the child's needs; or

(c) The parent has abandoned the child, as described in Title 22, section 4002, subsection 1-A;

In making findings pursuant to this paragraph, the court may consider the extent to which the parent had opportunities to rehabilitate and to reunify with the child, including actions by the child's other parent to foster or to interfere with a rela-

tionship between the parent and child or services provided by public or nonprofit agencies.

4. Guardian ad litem for child. The court may appoint a guardian ad litem for a child who is the subject of a petition for termination of parental rights under subsection 1. The appointment must be made as soon as possible after the petition for termination of parental rights is initiated.

A. The court shall pay reasonable costs and expenses for the guardian ad litem.

B. In general, the guardian ad litem shall act in pursuit of the best interest of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate:

(1) Reviewing records of psychiatric, psychological or physical examinations of the child, parents or other persons having or seeking care or custody of the child;

(2) Review of relevant school records and other pertinent materials;

(3) Interviewing the child with or without other persons present; and

(4) Interviews with parents, guardians, teachers and other persons who have been involved in caring for or treating the child.

The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make recommendations to the court.

§9-205. Review

1. Judicial review required; 18 months. The court shall conduct a judicial review if:

A. A child is not adopted within 18 months of the execution of a surrender and release;

B. The adoption is not finalized within 18 months of the consent to an adoption by a parent or parents; or

C. A petition for adoption is not finalized within 18 months.

2. Determination whether adoption viable plan; review; plan; District Court. If, after judicial review under subsection 1, the court determines that adoption is still a viable plan for the child, the court shall schedule another judicial review within 2 years. If the court determines that adoption is no longer a viable plan, the court shall attempt to notify the parents, who must be given an opportunity to present an acceptable plan for the child. If either or both parents are able and willing to assume physical custody of the child, the court shall declare the surrender and release or the consent void.

If the parents are not notified or are unable or unwilling to assume physical custody of the child or if the court determines that placement of the child with the parents would constitute jeopardy as defined by Title 22, section 4002, subsection 6, the case must be transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

PART 3

ADOPTION PROCEDURES

§9-301. Petition for adoption and change of name; filing fee

Spouses or unmarried persons jointly or an unmarried person, whether resident or nonresident of the State, may petition the court to adopt a person, regardless of age, and to change that person's name. The fee for filing the petition is \$65 plus:

1. National criminal history record check fee. The fee for a national criminal history record check for noncriminal justice purposes set by the Federal Bureau of Investigation for each prospective adoptive parent who is not a parent of the child; and

2. State criminal history record check fee. The fee for a state criminal history record check for non-criminal justice purposes established pursuant to Title 25, section 1541, subsection 6 for each prospective adoptive parent who is not a parent of the child.

§9-302. Consent for adoption

1. Written consent. Before an adoption is granted, written consent to the adoption must be given by:

A. The adoptee, if the adoptee is 14 years of age or older;

B. Each of the adoptee's living parents, except as provided in subsection 2;

C. A person or agency having legal custody or guardianship of the adoptee if the adoptee is a child or to whom the child has been surrendered and released, except that the person's or agency's lack of consent, if adjudged unreasonable by a court, may be overruled by the court. In order for the court to find that the person or agency acted unreasonably in withholding consent, the petitioner must prove, by a preponderance of the evidence, that the person or agency acted unreasonably. The court may hold a pretrial conference to determine who will proceed. The court may determine that even though the burden of proof is on the petitioner, the person or agency should proceed if the person or agency has important facts necessary to the petitioner in presenting the petitioner's case. The court shall consider the following:

(1) Whether the person or agency determined the needs and interests of the child;

(2) Whether the person or agency determined the ability of the petitioner and other prospective families to meet the child's needs;

(3) Whether the person or agency made the decision consistent with the facts;

(4) Whether the harm of removing the child from the child's current placement outweighs any inadequacies of that placement; and

(5) All other factors that have a bearing on a determination of the reasonableness of the person's or agency's decision in withholding consent; and

D. A guardian appointed by the court, if the adoptee is a child, when the child has no living parent, guardian or legal custodian who may consent.

A petition for adoption must be pending before a consent is executed.

2. Consent not required. Consent to adoption is not required of:

A. A putative parent if the putative parent:

(1) Received notice and failed to respond to the notice within the prescribed time period;

(2) Waived the right to notice under section 9-201, subsection 3;

(3) Does not establish parentage of the child under section 9-201, subsection 9; or

(4) Holds no parental rights regarding the adoptee under the laws of the foreign country in which the adoptee was born;

B. A parent whose parental rights have been terminated under Title 22, chapter 1071, subchapter 6;

C. A parent who has executed a surrender and release pursuant to section 9-202;

D. A parent whose parental rights have been voluntarily or judicially terminated and transferred to a public agency or a duly licensed private agency pursuant to the laws of another state or country; or

E. A parent of an adoptee who is 18 years of age or older.

3. Consent by department; notice. When the department consents to the adoption of a child in its custody, the department shall immediately notify:

A. The District Court in which the action under Title 22, chapter 1071 is pending; and

B. The guardian ad litem for the child.

§9-303. Petition

1. Sworn; contents. A petition for adoption must be sworn to by the petitioner and must include:

A. The full name, age and place of residence of the petitioner and, if married, the place and date of marriage;

B. The date and place of birth of the adoptee, if known;

C. The birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name, if any;

D. The residence of the adoptee at the time of the filing of the petition;

E. A statement of the petitioner's intention to establish a parent-child relationship between the petitioner and the adoptee and a statement that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

F. The names and addresses of all persons or agencies known to the petitioner that affect the custody of, visitation with or access to the adoptee;

G. The relationship, if any, of the petitioner to the adoptee;

H. The names and addresses of the department and the licensed child-placing agency, if any;

I. The names and addresses of all persons known to the petitioner at the time of filing from whom consent to the adoption is required; and

J. If the petition is for the adoption of a minor child, a statement that the petitioner acknowledges that after the adoption is finalized, the transfer of the long-term care and custody of the adoptee without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

2. Information to be shared and updated. A petitioner shall indicate to the court what information the petitioner is willing to share with the parents and under what circumstances and shall provide a mechanism for updating that information.

3. Caption. The caption of a petition for adoption may be styled "In the Matter of the Adoption Petition of (name of adoptee)." The petitioner must also be designated in the caption.

§9-304. Investigation; guardian ad litem; registry

1. Background check; study and report. Upon the filing of a petition for adoption of a minor child, the court shall request a background check and shall direct the department or a licensed child-placing agency to conduct a study and make a report to the court.

A. The study must include an investigation of the conditions and antecedents of the child to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child. The department or licensed child-placing agency shall submit the report to the court within 60 days.

(1) If the court has a report that provides sufficient, current information, the court may waive the requirement of a study and report.

(2) If the petitioner is a relative of the child or the spouse or domestic partner of the child's parent, the court may waive the requirement of a study and report.

B. The court shall request a background check for each prospective adoptive parent who is not a parent of the child. The background check must include a screening for child abuse cases in the records of the department and criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(3) Each prospective parent who is not a parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the court for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections

16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

(5) State and federal criminal history record information may be used by the court for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interest of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the court are for official use only and may not be disseminated outside the court except as required under Title 22, section 4011-A.

(7) The expense of obtaining the information required by this paragraph is incorporated in the adoption filing fee established in section 9-301. The court shall collect the total fee and transfer the appropriate funds to the Department of Public Safety and the department.

The court may waive the background check of a prospective adoptive parent if a previous background check was completed by a court or by the department under this subsection within a reasonable period of time and the court is satisfied that nothing new that would be included in the background check has transpired since the last background check.

This subsection does not authorize the court to request a background check for a petitioner who is also the current legal parent of the child.

2. Background checks by department. The department may, pursuant to rules adopted by the department, at any time before the filing of the petition for adoption, conduct background checks for each prospective adoptive parent of a minor child in its custody.

A. The department may request a background check for each prospective adoptive parent who is not a parent of the child. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(3) Each prospective parent who is not a parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

(5) State and federal criminal history record information may be used by the department for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interest of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering a petition for adoption under subsection 1.

B. Rules adopted by the department pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Child's background. This subsection governs the collection and disclosure of information about the background of a child subject to a petition for adoption under subsection 1.

A. The department, the licensed child-placing agency or any other person who acts to place or assist in placing a child for adoption shall make reasonable efforts to obtain medical and genetic information about the child, the parent who gave birth to the child and a parent who was a source of the gametes used in the child's conception. Specifically, the department, the licensed child-

placing agency or any other person who acts to place or assist in placing the child for adoption shall attempt to obtain from the child's parents any information concerning:

(1) A current medical, psychological and developmental history of the child, including an account of the child's prenatal care and medical condition at birth, results of newborn screening, any drug or medication taken during pregnancy by the parent who gave birth to the child, any subsequent medical, psychological or psychiatric examination and diagnosis, any physical, sexual or emotional abuse suffered by the child and a record of any immunizations and health care received since birth; and

(2) Relevant information concerning the medical, psychological and social history of a parent who was the source of the gametes used in the child's conception, including any known disease or hereditary disposition to disease, the history of use of drugs and alcohol, the health during pregnancy of the parent who gave birth to the child and the health of a parent who was the source of the gametes used in the child's conception at the time of the child's birth.

B. The department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption may request from donors or gestational carriers, as defined in Title 19-A, section 1832, their medical or genetic information identical to that described in paragraph A, subparagraphs (1) and (2) and shall make reasonable efforts to obtain any medical and genetic information concerning such individuals that is in the possession of the child's parent or parents.

C. Prior to the child being placed for adoption, the department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall provide the information described in paragraph A to the prospective adoptive parents.

D. If the department, the licensed child-placing agency or any other person who acts to place or assists in placing the child for adoption has specific, articulable reasons to question the truth or accuracy of any of the information obtained, those reasons must be disclosed in writing to the prospective adoptive parents.

E. The prospective adoptive parents must be informed in writing if any of the information described in this subsection cannot be obtained, either because the records are unavailable or be-

cause the parents are unable or unwilling to consent to its disclosure or to be interviewed.

F. If after a child is placed for adoption and either before or after the adoption is final the child suffers a serious medical or mental illness for which the specific medical, psychological or social history of the child's parents, donors or gestational carriers or the child may be useful in diagnosis or treatment, the prospective adoptive or adoptive parents may request that the department, the licensed child-placing agency or any other person who placed or assisted to place the child attempt to obtain additional information. The department, licensed child-placing agency or other person shall attempt to obtain the information promptly and shall disclose any information collected to the prospective adoptive or adoptive parents as soon as reasonably possible. The department, licensed child-placing agency or other person may charge a fee to the prospective adoptive or adoptive parents to cover the cost of obtaining and providing the additional information. Fees collected by the department must be dedicated to defray the costs of obtaining and providing the additional information. Fees may be reduced or waived for low-income prospective adoptive or adoptive parents.

G. The department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall file the information collected with the court and, if it appears that the adoption will be granted and this information has not previously been made available to the adoptive parents pursuant to Title 22, section 4008, subsection 3, paragraph G or Title 22, section 8205, the court shall make the information available to the adoptive parents, prior to issuing the decree pursuant to subsection 8, with protection for the identity of persons other than the child.

H. If the child to be placed for adoption is from a foreign country that has jurisdiction over the child and the prospective adoptive parents are United States citizens, compliance with federal and international adoption laws is deemed to be in compliance with this subsection.

4. Rebuttable presumption; sexual offenses.

There is a rebuttable presumption that the petitioner would create a situation of jeopardy for the child if the adoption were granted and that the adoption is not in the best interest of the child if the court finds that the petitioner for the adoption of a minor child:

A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the petitioner was at least 5 years older than the minor at the time of the offense, except that, if the offense was gross sexual assault

under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the petitioner and the minor victim at the time of the offense; or

B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The petitioner may present evidence to rebut the presumption.

5. Probationary period. The court may require that a minor child subject to a petition for adoption under this section live for one year in the home of the petitioner before the petition is granted and that the child, during all or part of this probationary period, be under the supervision of the department or a licensed adoption agency.

6. Guardian ad litem. The court may appoint a guardian ad litem for a minor child subject to a petition for adoption under this section at any time during the proceedings.

7. Adoption registry and services. Before the adoption of a minor child is decreed, the court shall ensure that the petitioners are informed of the existence of the adoption registry and the services available under Title 22, section 2706-A.

8. Declaration; name change. If the court is satisfied with the identity and relations of the parties to a petition for adoption under this section, with the ability of the petitioner to bring up and educate the child properly, considering the condition of the child's parents, and with the fitness and propriety of the adoption, the court shall make a decree setting forth the facts and declaring that from that date the child is the child of the petitioner and that the child's name is changed, without requiring public notice of that change.

9. Certified copy of birth certificate; certificate of adoption. A certified copy of the birth certificate of the child proposed for adoption must be presented with the petition for adoption if the certified copy can be obtained or made available by filing a delayed birth registration. After the adoption has been decreed, the register shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

10. Transfer of long-term care or custody without court order. Before the adoption is decreed under subsection 8, the court shall ensure that the petitioners are informed that the transfer of the long-term care and custody of the child without a court order is

prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

§9-305. Evidence; procedure

The court may proceed as follows in considering a petition for adoption.

1. Adoptee interview. The court may interview any adoptee, and shall interview an adoptee who is 12 years of age or older, outside the presence of the prospective adoptive parents, to determine the adoptee's attitudes and desires about the adoption and other relevant issues.

2. Inspection of records; disclosure. The court may conduct an inspection in camera of records of relevant child protective proceedings and may disclose only that information necessary for the determination of any issue before the court. Any disclosure of information must be done pursuant to Title 22, section 4008, subsection 3.

3. Recording; expenses. The parties may request a recording of the proceedings. The requesting party shall pay the expense of the recording.

§9-306. Allowable payments; expenses

1. Allowable payments by or on behalf of petitioner. Except when one of the petitioners is a blood relative of the adoptee or the adoptee is an adult, only the following expenses may be paid by or on behalf of a petitioner in any proceeding under this Article:

A. The actual cost of legal services related to the surrender and release or the consent and to the adoption process;

B. Prenatal and postnatal counseling expenses for the person giving birth to the child;

C. Prenatal, birthing and other related medical expenses for the person giving birth to the child;

D. Necessary transportation expenses to obtain the services listed in paragraphs A, B and C;

E. Foster care expenses for the child;

F. Necessary living expenses for the person giving birth to the child and the child;

G. For a putative parent, legal and counseling expenses related to the surrender and release, the consent and the adoption process; and

H. Fees to a licensed child-placing agency providing services in connection with the pending adoption.

2. Full accounting of disbursements by petitioner. Prior to the dispositional hearing pursuant to section 9-308, the petitioner shall file a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting report

must be signed under penalty of perjury and must be submitted to the court on or before the date the final decree is granted. The accounting report must be itemized and show the services related to the adoption or to the placement of the adoptee for adoption that were received by the adoptee's parents, by the adoptee or on behalf of the petitioner. The accounting must include the dates of each payment and the names and addresses of each attorney, physician, hospital, licensed child-placing agency or other person or organization who received funds or anything of value from the petitioner in connection with the adoption or the placement of the adoptee with the petitioner or participated in any way in the handling of the funds, either directly or indirectly. This subsection does not apply when one of the petitioners is a blood relative or the adoptee is an adult.

3. Payments not contingent; other expenses and payments prohibited. Payment for expenses allowable under subsection 1 may not be contingent upon any future decision a parent might make pertaining to the child. Other expenses or payments to parents are not authorized.

§9-307. Adoption not granted

If the court determines that it is unable to finalize an adoption to which parents have consented, the court shall notify the parents that the court has not granted the adoption and shall conduct a review pursuant to section 9-205.

§9-308. Final decree; dispositional hearing; effect of adoption

1. Final decree of adoption; requirements. The court shall grant a final decree of adoption if the petitioner who filed the petition has been heard or has waived hearing and the court is satisfied from the hearing or record that:

A. All necessary consents, relinquishments or terminations of parental rights have been duly executed and filed with the court;

B. An adoption study, when required by section 9-304, has been filed with the court;

C. A list of all disbursements as required by section 9-306 has been filed with the court;

D. The petitioner is a suitable adopting parent and desires to establish a parent-child relationship with the adoptee;

E. The best interest of the adoptee, described in subsection 2, are served by the adoption;

F. The petitioner has acknowledged that the petitioner understands that the transfer of the long-term care and custody of an adoptee who is a minor child without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D; and

G. All requirements of this Article have been met.

2. Best interest of adoptee. In determining the best interest of an adoptee, the court shall consider and evaluate the following factors to give the adoptee a permanent home at the earliest possible date:

A. The love, affection and other emotional ties existing between the adoptee and the adopting person or persons, a parent or a putative parent;

B. The capacity and disposition of the adopting person or persons, the parent or parents or the putative parent to educate and give the adoptee love, affection and guidance and to meet the needs of the adoptee. An adoption may not be delayed or denied because the adoptive parent and the adoptee do not share the same race, color or national origin; and

C. The capacity and disposition of the adopting person or persons, the parent or parents or the putative parent to provide the adoptee with food, clothing and other material needs, education, permanence and medical care or other remedial care recognized and permitted in place of medical care under the laws of this State.

3. Findings; decree; confidentiality. The court shall enter its findings in a written final decree that includes the new name of the adoptee. The final decree must further order that from the date of the decree the adoptee is the child of the petitioner and must be accorded the status set forth in section 9-105. If the court determines that it is in the best interest of the adoptee, the court may require that the names of the adoptee and of the petitioner be kept confidential.

4. Notice to parents. Upon completion of an adoption proceeding, the parents who consented to an adoption or who executed a surrender and release must be notified by the court of the completion by regular mail at their last known address. Notice under this subsection is not required to a parent who is also a petitioner. When the parents' rights have been terminated pursuant to Title 22, section 4055, the notice must be given to the department and the department shall notify the parents of the completion by regular mail at their last known address. Actual receipt of the notice is not a precondition of completion and does not affect the rights or responsibilities of adoptees or adoptive parents.

5. Notice to grandparents. The department shall notify the grandparents of a child when the child is placed for adoption if the department has received notice that the grandparents were granted reasonable rights of visitation or access under Title 19-A, chapter 59 or Title 22, section 4005-E.

6. Effect of adoption. An order granting the adoption has the following effect:

A. An order granting the adoption of the child by the petitioner divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except an adoptee inherits from the adoptee's former parents if provided in the adoption decree.

B. An adoption order may not disentitle a child to benefits due the child from any 3rd person, agency or state or the United States and may not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe.

§9-309. Appeals

1. Appeal; bond not required of child or next friend. Any party may appeal from any order entered under this Article to the Supreme Judicial Court sitting as the Law Court, as in other civil actions, but a bond to prosecute an appeal is not required of a child or next friend and costs may not be awarded against either.

2. Appeal expedited. An appeal from any order under this Article must be expedited.

3. Attorney, guardian ad litem continues. An attorney or guardian ad litem appointed to represent a party in an adoption proceeding continues to represent the interests of that party in any appeal unless otherwise ordered by the court.

§9-310. Records confidential

Notwithstanding any other provision of law and except as provided in Title 22, section 2768, all court records relating to an adoption decreed on or after August 8, 1953 are confidential. The court shall keep records of those adoptions segregated from all other court records. If a court determines that examination of records pertaining to a particular adoption is proper, the court may authorize that examination by specified persons, authorize the register to disclose to specified persons any information contained in the records by letter, certificate or copy of the record or authorize a combination of both examination and disclosure.

Any medical or genetic information in the court records relating to an adoption must be made available to the adopted child when the adopted child attains 18 years of age and to the adopted child's descendants, adoptive parents or legal guardian on petition of the court.

§9-311. Interstate placements

1. Certificate of compliance; bring child to this State. A person or agency who intends to bring a child to this State from another state for the purpose of adoption must provide to the court the certification of compliance as required by the department pursuant to Title 22, chapter 1153 or 1154, as applicable.

2. Certificate of compliance; remove child from this State. A person or agency who intends to

remove a child from this State for the purpose of adoption in another state must obtain from the department certification of compliance with Title 22, chapter 1153 or 1154, as applicable, prior to the removal of the child from this State.

3. Department certification required. The court may not grant a petition to adopt a child who has been brought to or will be removed from this State for the purpose of adoption without department certification of compliance with Title 22, chapter 1153 or 1154, as applicable.

4. Civil violation. An agency or person who fails to comply with this section commits a civil violation for which a fine of not less than \$100 and not more than \$5,000 may be adjudged.

§9-312. Foreign adoptions

If an adoption in a foreign country has been finalized and the adopting parents are seeking an adoption under the laws of this State to give recognition to the foreign adoption, a court may enter a decree of adoption based solely upon a judgment of adoption in a foreign country and may order a change of name if requested by the adopting parents. The fee for filing the petition is \$55.

§9-313. Advertisement

1. Definitions. As used in this section, the following terms have the following meanings.

A. "Advertise" means to communicate by any public medium that originates within this State, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television, or by any computerized communication system, including by e-mail, website, Internet account or any similar medium of communication provided via the Internet.

B. "Internet account" means an account created within a bounded system established by an Internet-based service that requires a user to input or store access information in an electronic device in order to view, create, use or edit the user's account information, profile, display, communications or stored data.

2. Advertising prohibited. A person may not:

A. Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody;

B. Advertise that the person will find an adoptive home or any other permanent physical placement for a child or arrange for or assist in the adoption, adoptive placement or any other permanent physical placement of a child;

C. Advertise that the person will place a child for adoption or in any other permanent physical placement; or

D. Advertise for the purpose of finding a person to adopt or otherwise take into permanent custody a particular child.

3. Exceptions. This section does not prohibit:

A. The department or a child-placing agency from advertising in accordance with rules adopted by the department; or

B. An attorney licensed to practice in this State from advertising the attorney's availability to practice or provide services relating to the adoption of children.

4. Violation. A person who violates subsection 2 commits a civil violation for which a fine of not more than \$5,000 may be adjudged.

§9-314. Immunity from liability for good faith reporting; proceedings

A person, including an agent of the department, who participates in good faith in reporting violations of this Article or participates in a related child protection investigation or proceeding is immune from any criminal or civil liability for reporting or participating in the investigation or proceeding. For purposes of this section, "good faith" does not include instances when a false report is made and the person knows the report is false.

§9-315. Annulment of the adoption decree

1. Annulment; reasons and limitations. A court may, on petition filed within one year of the decree of adoption and after notice and hearing, reverse and annul an adoption decree based on findings by clear and convincing evidence that the adoption was obtained as a result of fraud, duress or illegal procedures.

A. If the adoptee is a minor, the court shall appoint a guardian ad litem on behalf of the minor adoptee and shall consider the best interest of the child, taking into account the factors set forth in Title 19-A, section 1653, subsection 3. The court shall sustain the decree unless there is clear and convincing evidence of one or more bases for annulment and that the decree is not in the best interest of the child.

The court may allocate the costs of the guardian ad litem to one or more of the parties and may appoint counsel for a minor adoptee or a party to the annulment proceedings. A minor adoptee may appear and be represented by counsel.

B. Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued, the decree may not be questioned by any

person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice or lack of jurisdiction of the parties or of the subject matter.

2. Notice. Notice of a petition to annul must be given to the parents, except those whose parental rights were terminated through a proceeding pursuant to Title 22, section 4055, subsection 1, paragraph B, subparagraph (2), and to all parties to the adoption including the adoptive parents, an adoptee who is 14 years of age or older and the agency involved in the adoption.

3. Certified copy of annulment. After the court annuls a decree of adoption, the register shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics.

PART 4

ADOPTION ASSISTANCE PROGRAM

§9-401. Authorization; special needs children

1. Program. There is established in the Department of Health and Human Services the Adoption Assistance Program, referred to in this Part as "the program."

2. Adoption assistance for special needs children. Subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, the department may provide through the program adoption assistance for special needs children in its care or custody or in the custody of a nonprofit private licensed child-placing agency in this State if those children are legally eligible for adoption and, when reasonable but unsuccessful efforts have been made to place them without adoption assistance, would not otherwise be adopted without the assistance of this program.

3. One-time adoption expenses. The department shall, subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, reimburse adoptive parents of a special needs child for one-time adoption expenses when reasonable but unsuccessful efforts have been made to place the child without such assistance.

4. "Special needs child" defined. As used in this Part, "special needs child" means a child who:

- A. Has a physical, mental or emotional handicap that makes placement difficult;
- B. Has a medical condition that makes placement difficult;
- C. Is a member of a sibling group that includes at least one member who is difficult to place;
- D. Is difficult to place because of age or race;

E. Has been a victim of physical, emotional or sexual abuse or neglect that places the child at risk for future emotional difficulties; or

F. Has in that child's family background factors such as severe mental illness, substance abuse, prostitution, genetic or medical conditions or illnesses that place the child at risk for future problems.

5. Funds. For the purposes of this section, the department is authorized to use funds that are appropriated for child welfare services and funds provided under the United States Social Security Act, Titles IV-B and IV-E.

6. Amount of adoption assistance. The amount of adoption assistance under the program may vary depending upon the resources of the adoptive parents and the special needs of the child, as well as the availability of other resources, but may not exceed the total cost of caring for the child if the child were to remain in the care or custody of the department, without regard to the source of the funds.

7. Duration of assistance. The duration of assistance under the program may continue until the cessation of legal parental responsibility or until the parents are no longer supporting the child, at which time the adoption assistance ceases. However, if the child has need of educational benefits or has a physical, mental or emotional handicap, adoption assistance may continue until the adoptee has attained 21 years of age if the adoptee, the parents and the department agree that the need for care and support exists.

8. Children from another state. Children who are in the custody of a person or agency in another state who are brought to this State for the purpose of adoption are not eligible for adoption assistance through the program except for reimbursement of non-recurring expenses if the child meets the requirements of the United States Social Security Act, 42 United States Code, Section 673(c).

§9-402. Adoption assistance

1. Eligible applicants. An application for the program may be submitted by the following persons:

- A. A foster parent interested in adopting an eligible child in the foster parent's care;
- B. A person interested in adopting an eligible child; or
- C. An adoptive parent who was not informed of the program or of facts relevant to a child's eligibility when adopting a child who was at the time of adoption eligible for participation in the program.

2. Standards for adoption apply. All applicants for the program must meet department standards for adoption except for financial eligibility.

3. Assistance based on special needs. Assistance under the program may be provided for special needs only and may be varied based on the special needs of the child. Assistance may be provided for a period of time based on the special needs of the child.

§9-403. Administration

1. Written agreement before final decree; exceptions; reduction in payments. A written agreement between an applicant entering into the program and the department must precede the final decree of adoption, except that an application may be filed subsequent to the finalization of the adoption if there were facts relevant to the child's eligibility that were not presented at the time of the request for assistance or if the child was eligible for participation in the program at the time of placement and the adoptive parents were not informed of the program.

Except as provided by section 9-401, subsection 8, once an adoption assistance payment is agreed upon and the agreement signed by the prospective adoptive parents, the department may not reduce the adoption assistance payment amounts.

2. Annual determination. If assistance under the program continues for more than one year, the need for assistance must be annually redetermined. Adoption assistance continues regardless of the state in which the adoptive parents reside, or the state to which the adoptive parents move, as long as the adoptive parents continue to be eligible based on the annual redetermination of need.

3. Transfer to legal guardian; new agreement. Upon the death of all adoptive parents, adoption assistance under the program may be transferred to the legal guardian as long as the child continues to be eligible for adoption assistance pursuant to the terms of the most recent adoption assistance agreement with the adoptive parents. The department shall enter into a new assistance agreement with the legal guardian.

§9-404. Rules

The department shall adopt rules for the program consistent with this Part.

PART B

Sec. B-1. 33 MRSA c. 5, as amended, is repealed.

Sec. B-2. 33 MRSA c. 5-A is enacted to read:

CHAPTER 5-A

RULE AGAINST PERPETUITIES

§111. Statutory rule against perpetuities

1. Validity of nonvested property interest. A nonvested property interest is invalid unless:

A. When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

B. The interest either vests or terminates within 90 years after its creation.

2. Validity of general power of appointment subject to a condition precedent. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

A. When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

B. The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

3. Validity of nongeneral or testamentary power of appointment. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

A. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

B. The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

4. Possibility of post-death child disregarded. In determining whether a nonvested property interest or a power of appointment is valid under subsection 1, paragraph A; subsection 2, paragraph A; or subsection 3, paragraph A, the possibility that a child will be born to an individual after the individual's death is disregarded.

5. Effect of certain "later of"-type language. Language contained in a governing instrument that measures a period from the creation of a trust or other property arrangement is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives in being if the language seeks:

A. To disallow the vesting or termination of any interest or trust beyond the later of:

(1) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; and

(2) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement;

B. To postpone the vesting or termination of any interest or trust until the later of:

(1) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; and

(2) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement; or

C. To operate in effect in any fashion similar to that described in paragraph A or B upon the later of:

(1) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; and

(2) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement.

§112. When nonvested property interest or power of appointment created

1. General principles. Except as provided in subsections 2 and 3 and in section 115, subsection 1, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

2. Unqualified beneficial owner. For purposes of this chapter, if there is an individual who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in section 111, subsection 2 or 3, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

3. Arising out of transfer of property. For purposes of this chapter, a nonvested property interest or a power of appointment arising out of a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

§113. Reformation

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and so that the reformed disposition is within the 90 years allowed by section 111, subsection

1, paragraph B; section 111, subsection 2, paragraph B; or section 111, subsection 3, paragraph B if:

1. Nonvested property interest or power of appointment. A nonvested property interest or a power of appointment becomes invalid under section 111;

2. Class gift. A class gift is not but might become invalid under section 111 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

3. Certain nonvested property interest not validated. A nonvested property interest that is not validated by section 111, subsection 1, paragraph A can vest but not within 90 years after its creation.

§114. Exclusions from statutory rule against perpetuities

Section 111 does not apply to:

1. Nonvested property interest or power of appointment arising out of nondonative transfer; exceptions. A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

A. A premarital or postmarital agreement;

B. A separation or divorce settlement;

C. A spouse's election;

D. An arrangement similar to those described in paragraphs A, B and C arising out of a prospective, existing or previous marital relationship between the parties;

E. A contract to make or not to revoke a will or trust;

F. A contract to exercise or not to exercise a power of appointment;

G. A transfer in satisfaction of a duty of support; or

H. A reciprocal transfer;

2. Fiduciary's power. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

3. Power to appoint fiduciary. A power to appoint a fiduciary;

4. Discretionary power of trustee to distribute. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

5. Nonvested property interest held by charity, government or governmental agency or subdivi-

sion. A nonvested property interest held by a charity, government or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

6. Not subject to rule or excluded by other statute. A property interest, power of appointment or arrangement that was not subject to the common law rule against perpetuities or is excluded by another statute of this State; or

7. Trusts to which rule does not apply. A trust in which the governing instrument provides that the rule against perpetuities does not apply to the trust and under which the trustee or other individual to whom the power is properly granted or delegated has the power under the governing instrument, applicable statute or common law to sell, mortgage or lease property for any period of time beyond the period that is required for an interest created under the governing instrument to vest. This subsection applies to all trusts created by will or inter vivos instrument executed or amended on or after July 1, 2019 and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after July 1, 2019.

§115. Application

1. Nonvested property interest or a power of appointment created prior to effective date of this chapter. This subsection governs nonvested property interests and powers of appointment created prior to July 1, 2019.

A. Except as provided in section 116, subsection 1, this chapter may not be construed to invalidate or modify the terms of any limitation that would have been valid prior to August 20, 1955.

B. This chapter applies only to inter vivos instruments taking effect after August 20, 1955, to wills if the testator dies after August 20, 1955 and to appointments made after August 20, 1955, including appointments by inter vivos instruments or wills under powers created before August 20, 1955.

C. Section 114, subsection 7 applies to all trusts created by will or inter vivos instrument executed or amended on or after July 1, 2019 and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after July 1, 2019.

D. If a nonvested property interest or a power of appointment was created before July 1, 2019 and is determined in a judicial proceeding, commenced on or after July 1, 2019, to violate this State's rule against perpetuities as that rule existed before July 1, 2019, a court upon the petition of an interested person may reform the disposition in

the manner that most closely approximates the transferor's manifested plan of distribution and so that the reformed disposition is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

2. Nonvested property interest or a power of appointment created on or after July 1, 2019. Except as provided by subsection 1, paragraph D, this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 2019.

3. Creation by exercise of a power of appointment. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

§116. Contingent interests

1. Specified contingency within 30 years. Except as provided in subsection 2, a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken becomes a fee simple absolute if the specified contingency does not occur within 30 years from the date when the fee simple determinable or the fee simple subject to a right of entry becomes possessory. If the specified contingency occurs within the 30 years, the succeeding interest, which may be an interest in a person other than the individual creating the interest or that individual's heirs, becomes possessory or the right of entry exercisable notwithstanding the rule against perpetuities.

2. Contingency within period. If a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken is so limited that the specified contingency must occur, if at all, within the period of the rule against perpetuities, the interests take effect as limited.

3. Not applicable to public, charitable or religious purposes; grant to State or political subdivision. This section does not apply:

A. If both the fee simple determinable and the succeeding interest or both the fee simple and the right of entry are for public, charitable or religious purposes; or

B. To a deed, gift or grant to the State or any political subdivision of the State.

§117. Application of provisions

This chapter applies to both legal and equitable interests.

§118. Supersession

This chapter supersedes the rule of the common law known as the rule against perpetuities and it replaces chapter 5.

Sec. B-3. 33 MRSA §1602-103, sub-§(b), as enacted by PL 1981, c. 699, is amended to read:

(b) Neither the rule against perpetuities nor the provisions of section ~~403~~ 116, as it or its equivalent may be amended from time to time, may be applied to defeat any provision of the declaration, bylaws or rules and regulations adopted pursuant to section 1603-102, subsection (a), paragraph (1).

PART C

Sec. C-1. 1 MRSA §433, sub-§2-A, ¶D, as enacted by PL 2015, c. 250, Pt. D, §2, is amended to read:

D. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2023:

- (1) Title 13;
- (2) Title 13-B;
- (3) Title 13-C;
- (4) Title 14;
- (5) Title 15;
- (6) Title 16;
- (7) Title 17;
- (8) Title 17-A;
- (9) Title ~~18-A~~ 18-C;
- (10) Title 18-B;
- (11) Title 19-A;
- (12) Title 20-A; and
- (13) Title 21-A;

Sec. C-2. 3 MRSA §704, as enacted by PL 1985, c. 507, §1, is amended to read:

§704. Beneficiaries under disability

Any beneficiary who is entitled to make an election of benefits under subchapter ~~¶~~ 5, but is not lawfully qualified to make that election, shall have that election made in ~~his~~ the beneficiary's behalf by the person authorized to do so by Title ~~18-A~~ 18-C, Article ~~¶~~ 5.

Sec. C-3. 4 MRSA §152, sub-§5-A, as enacted by PL 2015, c. 460, §1, is amended to read:

5-A. Actions involving minors under Title 18-C. Exclusive jurisdiction of actions for guardianship, adoption, change of name or other matters involving custody or other parental rights brought under

Title ~~18-A~~ 18-C if proceedings involving custody or other parental rights with respect to a minor child, including but not limited to adoption, divorce, parental rights and responsibilities, grandparents' rights, protective custody, change of name, guardianship, paternity, termination of parental rights and protection from abuse or harassment, are pending in the District Court.

A. The District Court presiding over any matter involving custody or other parental rights with respect to a minor child shall require all parties to disclose whether they have knowledge of:

- (1) Any interim or final order then in effect concerning custody or other parental rights with respect to the minor child;
- (2) Any proceeding involving custody or other parental rights with respect to the minor child currently filed or pending before any court of this State or another state, including before a probate court in this State; or
- (3) Any other related action currently filed or pending before any court of this State or another state, including before a probate court in this State.

B. If the District Court presiding over any matter involving custody or other parental rights with respect to a minor child becomes aware that a proceeding for guardianship, adoption or change of name or another matter involving custody or other parental rights with respect to the minor child is pending in a probate court in this State, the District Court shall notify the Probate Court and take appropriate action to facilitate a transfer of the matter from the Probate Court;

Sec. C-4. 4 MRSA §253, as amended by PL 1979, c. 540, §7, is further amended to read:

§253. Jurisdiction in court where proceedings originate

Subject to Title ~~18-A~~ 18-C, sections 1-303 and 3-201, and except as otherwise provided in Title ~~18-A~~ 18-C, ~~sections 5-211 and 5-313~~ section 5-105, when a case is ~~originally~~ originally within the jurisdiction of the probate court in 2 or more counties, the one ~~which~~ that first commences proceedings therein retains the same exclusively throughout. The jurisdiction assumed in any case, except in cases of fraud, so far as it depends on the residence of any person or the locality or amount of property, ~~shall~~ may not be contested in any proceeding whatever, except on an appeal or removal from the probate court in the original case or when the want of jurisdiction appears on the same record.

Sec. C-5. 4 MRSA §807, sub-§3, ¶I, as amended by PL 2001, c. 554, §1 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

I. A person who is not an attorney, but is representing the Department of Health and Human Services in a child support enforcement matter as provided by Title 14, section 3128-A, subsection 7; Title ~~18-A~~ 18-C, section 5-204; and Title 19-A, section 2361, subsection 10;

Sec. C-6. 4 MRSA §807, sub-§3, ¶S, as amended by PL 2015, c. 195, §1, is further amended to read:

S. An individual who is the sole member of a limited liability company or is a member of a limited liability company that is owned by a married couple, registered domestic partners or an individual and that individual's issue as defined in Title ~~18-A~~ 18-C, section 1-201, subsection ~~(2)~~ 27 who is not an attorney but is appearing for that company in an action for forcible entry and detainer pursuant to Title 14, chapter 709.

Sec. C-7. 4 MRSA §1204, as enacted by PL 1983, c. 853, Pt. C, §§15 and 18, is amended to read:

§1204. Beneficiaries under disability

Any beneficiary who is entitled to make an election of benefits under ~~Subchapter V~~ subchapter 5, but is not lawfully qualified to make that election, shall have that election made in ~~his~~ the beneficiary's behalf by the person authorized to do so by Title ~~18-A~~ 18-C, Article ~~V~~ 5.

Sec. C-8. 4 MRSA §1551, sub-§2, as enacted by PL 2013, c. 406, §1, is amended to read:

2. Guardian ad litem. "Guardian ad litem" means a person appointed as the court's agent to represent the best interests of one or more children pursuant to Title ~~18-A~~ 18-C, section ~~4-H2~~ 1-111, Title 19-A, section 1507 or Title 22, section 4005.

Sec. C-9. 4 MRSA §1551, sub-§3, as enacted by PL 2013, c. 406, §1, is amended to read:

3. Best interests of the child. "Best interests of the child" means an outcome that serves or otherwise furthers the health, safety, well-being, education and growth of the child. In applying the standard of best interests of the child in Title ~~18-A~~ 18-C and Title 19-A cases, the relevant factors set forth in Title 19-A, section 1653, subsection 3 must be considered.

Sec. C-10. 4 MRSA §1554, sub-§1, as enacted by PL 2013, c. 406, §1, is amended to read:

1. Role of guardian ad litem. The court may appoint a guardian ad litem to provide information to assist the court in determining the best interests of the child involved in the determination of parental rights and responsibilities and guardianship of a minor under Title ~~18-A~~ 18-C, in the determination of parental rights and responsibilities under Title 19-A, section 904 or 1653 and in the determination of contact with grandparents under Title 19-A, section 1803. The

court shall appoint a guardian ad litem in a child protection case under Title 22, chapter 1071.

Sec. C-11. 4 MRSA §1555, sub-§1, as enacted by PL 2013, c. 406, §1, is amended to read:

1. Appointment of guardian ad litem. In proceedings to determine parental rights and responsibilities and guardianship of a minor under Title ~~18-A~~ 18-C and in contested proceedings pursuant to Title 19-A, section 904, 1653 or 1803 in which a minor child is involved, the court may appoint a guardian ad litem for the child when the court has reason for special concern as to the welfare of the child. The court may appoint a guardian ad litem on the court's own motion, on the motion of one of the parties or upon agreement of the parties.

A. A court may appoint, without any findings, any person listed on the roster. In addition, when a suitable guardian ad litem included on the roster is not available for appointment, a court may, for good cause shown and after consultation with the parties, appoint an attorney admitted to practice in this State who, after consideration by the court of all of the circumstances of the particular case, in the opinion of the appointing court has the necessary skills and experience to serve as a guardian ad litem. For the purposes of this paragraph, good cause may include the appointment of a guardian ad litem on a pro bono basis.

B. In determining whether to make an appointment, the court shall consider:

- (1) The wishes of the parties;
- (2) The age of the child;
- (3) The nature of the proceeding, including the contentiousness of the hearing;
- (4) The financial resources of the parties;
- (5) The extent to which a guardian ad litem may assist in providing information concerning the best interests of the child;
- (6) Whether the family has experienced a history of domestic abuse;
- (7) Abuse of the child by one of the parties; and
- (8) Other factors the court determines relevant.

Sec. C-12. 4 MRSA §1557, sub-§1, as enacted by PL 2013, c. 406, §1, is amended to read:

1. Rules. The Supreme Judicial Court shall provide by rule for a complaint process concerning guardians ad litem appointed under Title ~~18-A~~ 18-C, Title 19-A and Title 22 that provides for at least the following:

A. The ability of a party to make a complaint before the final judgment as well as after the final judgment is issued;

B. Written instructions on how to make a complaint;

C. Clear criteria for making a complaint;

D. Transparent policies and procedures concerning the investigation of complaints and the provision of information to complainants;

E. A central database to log and track complaints; and

F. Policies and procedures for using complaints and investigations for recommending the removal of a guardian ad litem from a particular case or other consequences or discipline.

Sec. C-13. 5 MRSA §12004-I, sub-§73-B, as enacted by PL 2009, c. 262, §1, is amended to read:

73-B.

Probate and Trust Law	Probate and Trust Law Advisory Commission	Not Authorized	18-A 18-C MRSA §1-801
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Sec. C-14. 5 MRSA §17055, sub-§§1 and 2, as enacted by PL 1985, c. 801, §§5 and 7, are amended to read:

1. Election of benefit. If a beneficiary is not lawfully qualified to make an election, the election ~~shall~~ must be made for ~~him~~ the beneficiary by the person authorized to do so by Title ~~18-A 18-C, article V~~ Article 5; and

2. Payment of benefit. Payment of any benefit to an ~~incapacitated person~~ individual subject to guardianship, as defined in Title ~~18-A 18-C, section 5-101 5-102,~~ or a minor ~~shall~~ must be made in accordance with Title ~~18-A 18-C, article V~~ Article 5.

Sec. C-15. 5 MRSA §17953, sub-§4, ¶B, as amended by PL 1991, c. 469, §2, is further amended to read:

B. The benefits begin the first month after the death of the qualifying member and are payable to each dependent child, in accordance with Title ~~18-A 18-C, article V~~ Article 5, until the end of the month in which the child no longer meets the definition of "dependent child" in section 17001, subsection 12.

Sec. C-16. 5 MRSA §18553, sub-§4, ¶B, as amended by PL 1991, c. 469, §5, is further amended to read:

B. The benefits begin the first month after the death of the qualifying member and are payable to each dependent child, in accordance with Title

~~18-A 18-C, article V~~ Article 5, until the end of the month in which the child no longer meets the definition of "dependent child" in section 17001, subsection 12.

Sec. C-17. 5 MRSA §19507, sub-§4, ¶D, as enacted by PL 1989, c. 837, §1, is amended to read:

D. If the public guardian established under Title ~~18-A 18-C, article V~~ Article 5, objects under paragraph B, the agency may petition the Probate Court that established the guardianship for permission to represent the person.

Sec. C-18. 9-B MRSA §427, sub-§2, ¶C, as amended by PL 1979, c. 540, §9, is further amended to read:

C. Subject to the provisions of Title ~~18-A 18-C,~~ section ~~6-114 6-222,~~ upon the death or disability of any fiduciary, the value of such deposit or account may be paid, at the option of the institution, and in the absence of notice of the existence and terms of a trust, either to the executor, administrator, conservator or guardian of such fiduciary, or to any substituted fiduciary, or to the person, if any, who is designated on the records of the institution as the beneficiary of such deposit, if of the age of 15 years or upwards, or to the guardian or parent or person standing in loci parentis to such person if under the age of 15 years. Subject to the provisions of Title ~~18-A 18-C,~~ section ~~6-112 6-226,~~ the receipt or acquittance of any such person ~~shall fully exonerate~~ exonerates and discharge discharges the institution from all liability to any person having any interest in such deposit, and the institution ~~shall~~ is not be under any duty to see to the proper application of the trust property.

Sec. C-19. 9-B MRSA §427, sub-§4, ¶A, as amended by PL 1979, c. 540, §10, is further amended to read:

A. When a deposit has been made or ~~shall hereafter be~~ is made in any financial institution authorized to do business in this State in the names of 2 or more persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or the interest or dividends thereon may be paid to any or either of said persons, whether the other or others be living or not, or to the legal representative of the survivor of said persons if proofs of death are presented to the financial institution showing that the decedent was the last surviving party or if there is clear and convincing evidence that no right of survivorship was intended at the time the account was created. Subject to the provisions of Title ~~18-A 18-C,~~ section ~~6-112 6-226,~~ the receipt or acquittance of the persons to whom said payment is so made ~~shall be~~ is a valid and sufficient release and discharge to

such financial institution for any payment so made.

Sec. C-20. 9-B MRSA §427, sub-§4, ¶B, as amended by PL 1979, c. 540, §11, is further amended to read:

B. All such deposits or accounts, whenever opened or issued, payable to either or the survivor including interest and dividends, in the name of the same persons in any financial institution within this State ~~shall~~, in the absence of fraud or undue influence, upon the death of one of such persons, become the property of the parties as provided in Title ~~18-A 18-C~~, section ~~6-104 6-212~~.

Sec. C-21. 9-B MRSA §427, sub-§8, ¶B, as enacted by PL 1979, c. 540, §12, is amended to read:

B. Notwithstanding the provisions of paragraph A, upon presentation of an affidavit under Title ~~18-A 18-C~~, section 3-1201, a financial institution shall pay the balance of any deposit or account left by a deceased depositor to the depositor's successor under the provisions of Title ~~18-A 18-C~~, sections 3-1201 and 3-1202. Such payments under this paragraph ~~shall~~ take precedence over payments under paragraph A to the extent of the balance of the deposits or accounts of the deceased depositor at the time the affidavit is presented.

Sec. C-22. 9-B MRSA §427, sub-§10, as repealed and replaced by PL 2007, c. 88, §1, is amended to read:

10. Adverse claim to deposit or account. Except as provided in Title 11, section 4-405, in Title 14, section 4751 and in Title ~~18-A 18-C~~, sections ~~6-107 6-102~~ and ~~6-112 6-226~~, notice to a financial institution authorized to do business in this State of an adverse claim to a deposit or account standing on its books to the credit of any person is not effectual to cause that institution to recognize the adverse claimant, unless the adverse claimant either procures a restraining order, injunction or other appropriate process against the institution from a court of competent jurisdiction in a civil action to which the person to whose credit the deposit or account stands is made a party or executes to that institution, in a form and with sureties acceptable to the institution, a bond indemnifying the institution from all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of checks or other orders of the person to whose credit the deposit or account stands on the books of the institution.

This subsection does not apply to the creation, perfection or enforcement of a security interest in a deposit or account other than an assignment of a deposit or account in a consumer transaction as defined in Title 11, section 9-1102, subsection 26.

Sec. C-23. 9-B MRSA §427, sub-§13, as enacted by PL 1979, c. 540, §13-A, is amended to read:

13. Notice on opening certain accounts. A signature card or other document establishing a multiple-party account, as defined in Title ~~18-A 18-C~~, section ~~6-104 6-201~~, shall must contain a clear and conspicuous printed notice to the depositor that on ~~his~~ the depositor's death the balance in the account will belong to the surviving party.

Sec. C-24. 9-B MRSA §473, sub-§2, ¶C, as enacted by PL 1997, c. 398, Pt. I, §41, is amended to read:

C. Assets held by a trustee, executor, administrator, guardian or other fiduciary may be invested in a common trust fund established under Title ~~18-A 18-C~~, section ~~7-504 7-201~~;

Sec. C-25. 9-B MRSA §476, sub-§1, ¶D, as enacted by PL 1997, c. 398, Pt. I, §41, is amended to read:

D. The court may appoint one or more guardians ad litem to represent the interests of a person:

- (1) Entitled to receive notice pursuant to paragraph C, who is a minor or who is known by the petitioner or any transferor affiliate to be subject to any other disability, including confinement in a penal institution, and for whom no guardian, other than a transferor affiliate, has been appointed;
- (2) Of whose estate a transferor affiliate is conservator and for whom no guardian, other than a transferor affiliate, has been appointed; and
- (3) Whose identity or whereabouts is unknown.

Title ~~18-A 18-C~~, section 1-403 governs in determining the propriety of any such appointments.

Sec. C-26. 13 MRSA §732, sub-§5, as amended by PL 2015, c. 429, §3, is further amended to read:

5. Legal guardian or personal representative of deceased or incapacitated dentist. For the purposes of this chapter, the legal guardian or personal representative of a dentist licensed under Title 32, chapter 143 may contract with another dentist to continue the operations of the practice of the deceased or incapacitated dentist for a period of up to 24 months after the death or incapacitation of the dentist or until the practice is sold, whichever occurs first. For purposes of this subsection, "personal representative" has the same meaning as in Title ~~18-A 18-C~~, section 1-201, subsection ~~30 40~~.

Sec. C-27. 13 MRSA §732, sub-§6, as enacted by PL 2013, c. 46, §1, is amended to read:

6. Legal guardian or personal representative of deceased or incapacitated veterinarian. For the purposes of this chapter, the legal guardian or personal representative of a veterinarian licensed under Title 32, chapter 71-A may contract with another veterinarian to continue the operations of the practice of the deceased or incapacitated veterinarian for a period of up to 24 months after the death or incapacitation of the veterinarian or until the practice is sold, whichever occurs first. For purposes of this subsection, "personal representative" has the same meaning as in Title ~~18-A~~ 18-C, section 1-201, subsection ~~30~~ 40.

Sec. C-28. 13-C MRSA §1501, sub-§2, ¶L, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

L. Engaging as a trustee in those actions defined by Title ~~18-A~~ 18-C, section ~~7-105~~ 7-103 as not in themselves requiring local qualification of a foreign corporate trustee; or

Sec. C-29. 14 MRSA §6303, as amended by PL 1979, c. 540, §24, is further amended to read:

§6303. Death of mortgagor or successor

If a person entitled to redeem a mortgaged estate or an equity of redemption ~~which that~~ 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 the person's~~ personal representative, or by ~~his the person's~~ heirs or devisees subject to the authority of the personal representative over the administration of the estate under Title ~~18-A~~ 18-C, 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 the plaintiff's~~ personal representative, or by ~~his the plaintiff's~~ heirs or devisees subject to the same authority of the personal representative. When a mortgagor resides out of the State, any person may, in ~~his the mortgagor's~~ behalf, tender to the holder of the mortgage the amount due thereon. The tender ~~shall be~~ is as effectual as if made by the mortgagor.

Sec. C-30. 14 MRSA §8104-C, as enacted by PL 1987, c. 740, §4, is amended to read:

§8104-C. Wrongful death action

Subject to any immunity provided by this chapter or otherwise provided by law, actions for the death of a person brought by the personal representatives of the deceased person against a governmental entity or employee ~~shall must~~ be brought in the same manner that is provided for similar actions in Title ~~18-A~~ 18-C, section ~~2-804~~ 2-807, and amounts recovered ~~shall must~~ be disposed of as required in that section; ~~provided, except~~ that the limitations of sections 8104-D and 8105 ~~shall~~ apply.

Sec. C-31. 15 MRSA §321, sub-§1, as amended by PL 2003, c. 672, §1, is further amended to read:

1. Definition. For purposes of this section, "family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of any household member when the offender is an adult household member. Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For purposes of this subsection, "domestic partners" has the same meaning as in Title ~~18-A~~ 18-C, section 1-201, subsection ~~(10-A)~~ 14.

Sec. C-32. 16 MRSA §651, as amended by PL 1979, c. 540, §24-B, is further 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, are the same as provided for civil actions. The rules of evidence in courts of probate are as provided in Title ~~18-A~~ 18-C, section ~~4-107~~ 1-106.

Sec. C-33. 17-A MRSA §553-A, sub-§1, ¶¶A and B, as enacted by PL 2015, c. 233, §1, are amended to read:

A. Is the parent of a child or is a person whose consent is required pursuant to Title ~~18-A~~ 18-C, section 9-302 and, in return for placing that child for adoption, intentionally or knowingly solicits or receives monetary payment or other valuable consideration that is not authorized by Title ~~18-A~~ 18-C, section 9-306; or

B. With the intent of adopting a child, intentionally or knowingly provides, or offers to provide, the parent of that child or the person whose consent is required pursuant to Title ~~18-A~~ 18-C, section 9-302 with monetary payment or other valuable consideration that is not authorized by Title ~~18-A~~ 18-C, section 9-306.

Sec. C-34. 18 MRSA §4163-A, as corrected by RR 2001, c. 2, Pt. B, §37 and affected by §58, is amended to read:

§4163-A. Corporation; application

Nothing in sections 4161 to 4163 or this section requires any corporation to file an application pursuant to sections 4161 to 4163 or this section if the corporation is deemed not to be doing business in this State under Title 13-C, section 1501 and Title ~~18-A~~ 18-C, section ~~7-105~~ 7-103.

Sec. C-35. 19-A MRSA §701, sub-§3, as amended by PL 2011, c. 542, Pt. A, §20, is further amended to read:

3. Persons subject to guardianship. A person ~~who has been found to be an incapacitated person, as defined in Title 18-A, section 5-101, subsection (1), by a court of competent jurisdiction and~~ for whom a guardian or limited guardian has been appointed under Title 18-C, section 5-301 may not contract marriage without the approval of the appointed guardian. For persons under limited guardianship, this subsection applies only if the court has granted the specific power to contract for marriage to the guardian.

Sec. C-36. 19-A MRSA §902, sub-§1, ¶J, as enacted by PL 2005, c. 594, §3, is amended to read:

J. ~~A judicial determination has been made that one of the parties is an incapacitated person, as defined in Title 18-A, section 5-101, for whom court has appointed for one of the parties a guardian with full powers has been appointed under Title 18-C, section 5-301, other than a temporary an emergency guardian appointed pursuant to Title 18-A 18-C, section 5-310-A 5-312.~~

Sec. C-37. 19-A MRSA §1802, sub-§1, as amended by PL 2015, c. 296, Pt. C, §19 and affected by Pt. D, §1, is further amended to read:

1. Grandparent. "Grandparent" is a parent of a child's parent. "Grandparent" includes a parent of a child's parent whose parental rights have been terminated pursuant to Title ~~18-A 18-C~~, section 9-204 or Title 22, chapter 1071, subchapter 6, but only until the child's adoption.

Sec. C-38. 19-A MRSA §1851, sub-§2, as enacted by PL 2015, c. 296, Pt. A, §1 and affected by Pt. D, §1, is amended to read:

2. Adoption. Adoption of the child pursuant to Title ~~18-A 18-C~~, Article 9;

Sec. C-39. 19-A MRSA §2002, as amended by PL 1999, c. 46, §2, is further amended to read:

§2002. Application

Notwithstanding any other provisions of law, this chapter applies to a court action or administrative proceeding in which a child support order is issued or modified under Title ~~18-A 18-C~~, section 5-204, this Title or Title 22 and to any court action or administrative proceeding in which past support is awarded.

Sec. C-40. 21-A MRSA §601, sub-§2, ¶B-1, as enacted by PL 2007, c. 455, §18, is amended to read:

B-1. The candidate's name listed on the ballot must be the one approved by the Probate Court, pursuant to Title ~~18-A 18-C~~, section 1-701, or, in the absence of an applicable court order, the name consistently used by the candidate during the past 2 years in filings with governmental agencies and in the transaction of public business, including without limitation transactions relating to voter

registration; motor vehicle registrations; driver licenses; a passport; professional licenses; local, state or federal permits of any kind; public benefit programs; and veterans' benefits and social security. If requested by the Secretary of State when there is a question concerning which name should be listed on the ballot, it is the obligation of the candidate to provide documentation to demonstrate consistent use of a particular name.

Sec. C-41. 22 MRSA §14, sub-§2-I, ¶B, as amended by PL 2003, c. 20, Pt. K, §2, is further amended to read:

B. The amount of MaineCare benefits paid and recoverable under this subsection is a claim against the estate of the deceased recipient.

(1) As to assets of the recipient included in the probated estate, this claim may be enforced pursuant to Title ~~18-A 18-C~~, Article 3, Part 8.

(2) As to assets of the recipient not included in the probated estate, this claim may be enforced by filing a claim in any court of competent jurisdiction.

Sec. C-42. 22 MRSA §14, sub-§2-I, ¶F, as amended by PL 2009, c. 150, §3, is further amended to read:

F. As used in this subsection, unless the context otherwise indicates, the term "estate" means:

(1) All real and personal property and other assets included in the recipient's estate, as defined in Title ~~18-A 18-C~~, section 1-201; and

(2) Any other real and personal property and other assets in which the recipient had any legal interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the deceased recipient through tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other arrangement but not including joint tenancy in real property.

Sec. C-43. 22 MRSA §1711-B, sub-§3, ¶D, as amended by PL 2015, c. 370, §2, is further amended to read:

D. The agent, guardian or surrogate pursuant to the Uniform ~~Health-care~~ Health Care Decisions Act; or

Sec. C-44. 22 MRSA §1711-C, sub-§1, ¶A, as amended by PL 2009, c. 292, §3 and affected by §6, is further amended to read:

A. "Authorized representative of an individual" or "authorized representative" means an individual's legal guardian; agent pursuant to Title ~~18-A 18-C~~, section ~~5-802 5-803~~; agent pursuant to Title

~~18-A 18-C~~, Article 5, Part 9; or other authorized representative or, after death, that person's personal representative or a person identified in subsection 3-B. For a minor who has not consented to health care treatment in accordance with the provisions of state law, "authorized representative" means the minor's parent, legal guardian or guardian ad litem.

Sec. C-45. 22 MRSA §1711-G, sub-§§2, 3 and 7, as enacted by PL 2015, c. 370, §6, are amended to read:

2. Designation of lay caregiver. In accordance with this subsection, a hospital licensed under chapter 405, but not a private mental hospital as described in chapter 404, shall allow for the designation of a lay caregiver to provide aftercare to a patient.

A. For a patient with capacity to make ~~health-care~~ health care decisions, as described in Title ~~18-A 18-C~~, Article 5, Part 8, the hospital shall provide the patient with at least one opportunity to designate a lay caregiver following the patient's admission to the hospital, or observation at the hospital for a period that includes midnight of at least one calendar day, and prior to the patient's discharge.

B. For a patient without capacity to make ~~health-care~~ health care decisions, as described in Title ~~18-A 18-C~~, Article 5, Part 8, the hospital shall provide the patient's legal guardian, agent or surrogate who is reasonably available and acting pursuant to Title ~~18-A 18-C~~, Article 5, Part 8 with at least one opportunity to designate a lay caregiver following the patient's admission to the hospital, or observation at the hospital for a period that includes midnight of at least one calendar day, and prior to the patient's discharge.

C. The hospital shall document the designation of a lay caregiver under this subsection in the patient's medical record, including the lay caregiver's name, relationship to the patient, telephone number, address and any other contact information as provided. If the patient or the patient's legal guardian, agent or surrogate who is reasonably available and acting pursuant to Title ~~18-A 18-C~~, Article 5, Part 8 declines to designate a lay caregiver, the hospital shall document that decision in the patient's medical record and that documentation constitutes compliance by the hospital with the requirements of this section. A designated lay caregiver may be removed or changed by the patient or the patient's legal guardian, agent or surrogate at any time, so long as the change or removal is documented by the hospital in the patient's medical record.

D. Designation of a lay caregiver under this subsection by the patient or the patient's legal guardian, agent or surrogate who is reasonably avail-

able and acting pursuant to Title ~~18-A 18-C~~, Article 5, Part 8 is optional. A designated lay caregiver is not obligated under this section to perform any aftercare tasks for the patient.

3. Written consent. If a lay caregiver is designated under subsection 2, the hospital shall request that the patient or the patient's legal guardian, agent or surrogate who is reasonably available and acting pursuant to Title ~~18-A 18-C~~, Article 5, Part 8 provide written consent to release medical information regarding the scope of care to the patient's designated lay caregiver to carry out the purposes of this section. Written consent under this subsection must be provided pursuant to the hospital's established procedures for releasing personal health information and in compliance with state and federal law.

7. Noninterference with health care directives. The provisions of this section may not be construed to interfere with the rights of an agent of a patient operating under a valid health care directive under Title ~~18-A 18-C~~, Article 5, Part 8.

Sec. C-46. 22 MRSA §1826, sub-§2, ¶I, as amended by PL 2017, c. 288, Pt. A, §29, is further amended to read:

I. No contract or agreement may contain a provision that provides for the payment of attorney's fees or any other cost of collecting payments from the resident, except that attorney's fees and costs may be collected against any agent under a power of attorney who breaches the agent's duties as set forth in Title ~~18-A 18-C~~, section 5-914 or against a conservator appointed under Title ~~18-A 18-C~~, section 5-404 for breach of the conservator's duties.

Sec. C-47. 22 MRSA §2765, sub-§1, ¶A, as amended by PL 1995, c. 694, Pt. D, §30 and affected by Pt. E, §2, is further amended to read:

A. A certificate of adoption as provided in Title ~~18-A 18-C~~, section 9-304, or a certified copy of the decree of adoption along with the information necessary to identify the original certificate and establish the new certificate of birth, except that a new certificate may not be established if so requested by the adopting parents or the adopted person if the adopted person is at least 18 years of age;

Sec. C-48. 22 MRSA §2765, sub-§1-A, ¶A, as amended by PL 1995, c. 694, Pt. D, §31 and affected by Pt. E, §2, is further amended to read:

A. A certificate of adoption as provided in Title ~~18-A 18-C~~, section 9-304; and

Sec. C-49. 22 MRSA §2843-A, sub-§9, as enacted by PL 1993, c. 609, §1, is amended to read:

9. Application. This section does not apply to the disposition of the remains of a deceased person under chapter 709. This section does not diminish or otherwise alter the authority of a medical examiner or other official authorized under chapter 711. This section does not alter the rights and obligations of the decedent's next of kin under Title ~~48-A~~ 18-C.

Sec. C-50. 22 MRSA §2848, first ¶, as enacted by PL 2015, c. 193, §2, is amended to read:

When a death is presumed to have occurred in the State but the body has not been located, the State Registrar of Vital Statistics shall register a death in accordance with this section upon receipt of a certified copy of an order of a court issued in accordance with Title ~~48-A~~ 18-C, section ~~4-107~~ 1-106, subsection ~~(3)~~ 5.

Sec. C-51. 22 MRSA §3173-E, as enacted by PL 1993, c. 410, Pt. FF, §9, is amended to read:

§3173-E. Treatment of joint bank accounts in Medicaid eligibility determinations

When determining eligibility for Medicaid, the department shall establish ownership of joint bank accounts in accordance with Title ~~48-A~~ 18-C, section ~~6-103~~ 6-211, subsection ~~(a)~~ 2. If the department determines that funds were withdrawn from a joint account without the consent of the applicant and the applicant owned the funds, the person to whom the funds were transferred is a liable 3rd party and the department shall pursue recovery of the funds in accordance with section 14. The department shall adopt rules to implement this section.

Sec. C-52. 22 MRSA §3472, sub-§10, as amended by PL 2003, c. 653, §2, is further amended to read:

10. Incapacitated adult. "Incapacitated adult" means ~~any an~~ an adult who is ~~impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to~~ unable to receive and evaluate information or make or communicate responsible informed decisions concerning that individual's person, or to the extent the adult can not effectively manage or apply that individual's estate to necessary ends to such an extent that the adult lacks the ability to meet essential requirements for physical health, safety or self-care, even with reasonably available appropriate technological assistance.

Sec. C-53. 22 MRSA §3472, sub-§12, as amended by PL 2003, c. 653, §2, is further amended to read:

12. Protective services. "Protective services" means services that separate incapacitated or dependent adults from danger. Protective services include, but are not limited to, social, medical and psychiatric services necessary to preserve the incapacitated or dependent adult's rights and resources and to maintain

the incapacitated or dependent adult's physical and mental well-being.

Protective services may include seeking guardianship or a protective order under Title ~~48-A~~ 18-C, Article 5.

Sec. C-54. 22 MRSA §3473, sub-§2, ¶C, as enacted by PL 1981, c. 527, §2, is amended to read:

C. Petition for guardianship or a protective order under Title ~~48-A~~ 18-C, Article 5, when all less restrictive alternatives have been tried and have failed to protect the incapacitated adult.

Sec. C-55. 22 MRSA §3481, sub-§2, as amended by PL 1993, c. 652, §8, is further amended to read:

2. Consent refused. When a private guardian or conservator of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for removal of the guardian pursuant to Title ~~48-A~~ 18-C, section ~~5-307, 5-319~~ or for removal of the conservator pursuant to Title ~~48-A~~ 18-C, section ~~5-415~~ 5-430. When a caretaker or guardian of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for temporary guardianship pursuant to Title ~~48-A~~ 18-C, section ~~5-310-A~~ sections 5-124 and 5-312 or for a protective arrangement pursuant to Title ~~48-A~~ 18-C, section ~~5-409~~ 5-501.

Sec. C-56. 22 MRSA §3482, as enacted by PL 1981, c. 527, §2, is amended to read:

§3482. Providing for protective services to incapacitated adults who lack the capacity to consent

If the department reasonably determines that an incapacitated adult is being abused, neglected or exploited and lacks capacity to consent to protective services, the department may petition the Probate Court for guardianship or conservatorship, in accordance with Title ~~48-A~~ 18-C, section ~~5-601~~ 5-701. The petition must allege specific facts sufficient to show that the incapacitated adult is in need of protective services and lacks capacity to consent to them.

Sec. C-57. 22 MRSA §3483, sub-§1, as amended by PL 1993, c. 652, §9, is further amended to read:

1. Action. When the court has exercised the power of a guardian or has appointed the department temporary guardian pursuant to Title ~~48-A~~ 18-C, section ~~5-310-A~~ sections 5-124 and 5-312, and the ward or a caretaker refuses to relinquish care and custody to the court or to the department, then at the request of the department, a law enforcement officer may take any necessary and reasonable action to obtain physical

custody of the ward for the department. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the ward is there.

Sec. C-58. 22 MRSA §3765, as enacted by PL 1997, c. 530, Pt. A, §16, is amended to read:

§3765. Payments to guardian or conservator

When a relative with whom a child is living is found by the department to be incapable of taking care of the child's money, payment may be made only to a legally appointed guardian or conservator and, notwithstanding Title ~~18-A~~ 18-C, Article ~~5~~ 5, Part 4, in the matter of infirmities of age or physical disability to manage the child's estate with prudence and understanding, the Probate Court may appoint any suitable person as a conservator.

Sec. C-59. 22 MRSA §4005-E, sub-§1, as amended by PL 2007, c. 371, §2, is further amended to read:

1. Grandparent visitation and access. A grandparent who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to grant reasonable rights of visitation or access. When a child is placed in a prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement, a grandparent's right to contact or have access to the child that was granted pursuant to this chapter is suspended. If the adoption is not final within 18 months of adoptive placement, then the grandparent whose rights of contact or access were suspended pursuant to this subsection may resume, as a matter of right and without further court order, contact with the child in accordance with the order granting that contact or access, unless the court determines after a hearing that the contact is not in the child's best interests. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Title ~~18-A~~ 18-C, section 9-308. Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when a court has previously ordered rights of contact.

Sec. C-60. 22 MRSA §4008, sub-§3, ¶B, as amended by PL 1995, c. 694, Pt. D, §38 and affected by Pt. E, §2, is further amended to read:

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a home study from the department pursuant to Title ~~18-A~~ 18-C, section 9-304 or Title 19-A, section 905. Access to such a report or record is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records is limited to in camera inspection, unless the court

determines that public disclosure of the information is necessary for the resolution of an issue pending before the court;

Sec. C-61. 22 MRSA §4008, sub-§3, ¶G, as amended by PL 2003, c. 673, Pt. Z, §2, is further amended to read:

G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title ~~18-A~~ 18-C, section 9-304, subsection ~~(b)~~ 3 and section 8205;

Sec. C-62. 22 MRSA §4031, sub-§1, ¶D, as amended by PL 1995, c. 694, Pt. D, §40 and affected by Pt. E, §2, is further amended to read:

D. The District Court has jurisdiction over judicial reviews transferred to the District Court pursuant to Title ~~18-A~~ 18-C, section 9-205.

Sec. C-63. 22 MRSA §4037, sub-§1, as enacted by PL 2015, c. 187, §1, is amended to read:

1. Adoption. Custody does not include the right to initiate adoption proceedings without parental consent, except as provided under Title ~~18-A~~ 18-C, section 9-302.

Sec. C-64. 22 MRSA §4038-A, as amended by PL 2005, c. 372, §5, is further amended to read:

§4038-A. Transfer to District Court

If a case is transferred to the District Court pursuant to Title ~~18-A~~ 18-C, section 9-205, the court shall conduct a hearing and enter a dispositional order using the same standards as set forth in section 4036. The court after the hearing and entering of a dispositional order shall conduct reviews in accordance with section 4038 and permanency planning hearings in accordance with section 4038-B.

Sec. C-65. 22 MRSA §4038-B, sub-§4, ¶A, as enacted by PL 2005, c. 372, §6, is amended to read:

A. The permanency plan must determine whether and when, if applicable, the child will be:

- (1) Returned to a parent. Before the court may enter an order returning the custody of the child to a parent, the parent must show that the parent has carried out the responsibilities set forth in section 4041, subsection 1-A, paragraph B; that to the court's satisfaction the parent has rectified and resolved the problems that caused the removal of the child from home and any subsequent problems that would interfere with the parent's ability to care for the child and protect the child from jeopardy; and that the parent can protect the child from jeopardy;

(2) Placed for adoption, in which case the department shall file a petition for termination of parental rights;

(3) Cared for by a permanency guardian, as provided in section 4038-C, or a guardian appointed by the Probate Court pursuant to Title ~~18-A~~ 18-C, sections 5-204 to 5-206 ~~and 5-207~~;

(4) Placed with a fit and willing relative; or

(5) Placed in another planned permanent living arrangement. The District Court may adopt another planned permanent living arrangement as the permanency plan for the child only after the department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to be returned home, be referred for termination of parental rights or be placed for adoption, be cared for by a permanency guardian or be placed with a fit and willing relative.

Sec. C-66. 22 MRSA §4038-C, sub-§2, as enacted by PL 2005, c. 372, §6, is amended to read:

2. Powers and duties of permanency guardian.

A permanency guardian has all of the powers and duties of a guardian of a minor pursuant to Title ~~18-A~~ 18-C, ~~section 5-209~~ sections 5-207 and 5-208.

Sec. C-67. 22 MRSA §4038-E, sub-§7, ¶A, as amended by PL 2013, c. 267, Pt. B, §20, is further amended to read:

A. The department may, pursuant to rules adopted pursuant to Title ~~18-A~~ 18-C, section 9-304, subsection (~~a-2~~) 2, request a background check for each permanency guardian. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(3) Each permanency guardian of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the

applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

(5) State and federal criminal history record information may be used by the department for the purpose of screening each permanency guardian in determining whether the adoption is in the best interests of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering an adoption petition under this section.

Sec. C-68. 22 MRSA §4051, as corrected by RR 1997, c. 2, §48, is amended to read:

§4051. Venue

A petition for termination of parental rights must be brought in the court that issued the final protection order. The court, for the convenience of the parties or other good cause, may transfer the petition to another district or division. A petition for termination of parental rights may also be brought in a Probate Court as part of an adoption proceeding as provided in Title ~~18-A~~ 18-C, ~~article IX~~ Article 9, when a child protective proceeding has not been initiated.

Sec. C-69. 22 MRSA §4055, sub-§1, ¶A, as amended by PL 2001, c. 696, §35, is further amended to read:

A. One of the following conditions has been met:

(1) Custody has been removed from the parent under:

(a) Section 4035 or 4038;

(b) Title 19-A, section 1502 or 1653;

(c) Section 3792 prior to the effective date of this chapter; or

(d) Title 15, section 3314, subsection 1, paragraph C-1; or

(2) The petition has been filed as part of an adoption proceeding in Title ~~18-A~~ 18-C, ~~article IX~~ Article 9; and

Sec. C-70. 22 MRSA §4065, as amended by PL 1981, c. 470, Pt. A, §102, is further amended to read:

§4065. Department's responsibility after death of committed child

If a child in the custody of the department dies, the department shall arrange and pay for a decent burial for the child. If administration of the deceased child's estate is not commenced, within 60 days after the date of death, by an heir or a creditor, then the department may petition the Probate Court to appoint an administrator and settle the estate of the deceased child pursuant to Title ~~18-A~~ 18-C.

Sec. C-71. 22 MRSA §4171, sub-§1, ¶A, as amended by PL 1995, c. 694, Pt. D, §49 and affected by Pt. E, §2, is further amended to read:

A. Finding adoptive families for children for whom state assistance is desirable, pursuant to the Adoption Assistance Program established in Title ~~18-A~~ 18-C, ~~article IX~~ Article 9, Part 4, and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state; and

Sec. C-72. 22 MRSA §5106, sub-§2, ¶E, as amended by PL 2011, c. 657, Pt. BB, §9, is further amended to read:

E. Conducting a continuous evaluation of the impact, quality and value of facilities, programs and services, including their administrative adequacy and capacity. Activities operated by or with the assistance of the State and the Federal Government must be evaluated. Activities to be included, but to which the department is not limited, are those relating to education, employment and vocational services, income, health, housing, transportation, community, social, rehabilitation, protective services and public guardianship or conservatorship for older people and incapacitated and dependent adults and programs such as the supplemental security income program, Medicare, Medicaid, property tax refunds and the setting of standards for the licensing of nursing, intermediate care and boarding homes. Included are activities as authorized by this and so much of the several Acts and amendments to them enacted by the

people of the State and those authorized by United States Acts and amendments to them such as the:

(1) Elderly Householders Tax and Rent Refund Act of 1971;

(2) Priority Social Services Act of 1973;

(3) Chapter 470 of the public laws of 1969 creating the State Housing Authority;

(4) United States Social Security Act of 1935;

(5) United States Housing Act of 1937;

(6) United States Older Americans Act of 1965;

(7) United States Age Discrimination Act of 1967;

(8) Home Based Care Act of 1981;

(9) Congregate Housing Act of 1979;

(10) Adult Day Care Services Act of 1983;

(11) Adult Day Care Licensing Act of 1987;

(12) Adult Protective Services Act of 1981;

(13) The Maine Uniform Probate Code, Title ~~18-A~~ 18-C;

(14) The Americans with Disabilities Act of 1990;

(15) The Developmental Disabilities Assistance and Bill of Rights Act of 2000; and

(16) The ADA Amendments Act of 2008;

Sec. C-73. 22 MRSA §8621, sub-§6, as amended by PL 2009, c. 292, §4 and affected by §6, is further amended to read:

6. Durable health care power of attorney.

"Durable health care power of attorney" has the same meaning as "power of attorney for health care" contained in Title ~~18-A~~ 18-C, section ~~5-801~~ 5-802.

Sec. C-74. 23 MRSA §3655, as amended by PL 1979, c. 663, §138, is further amended to read:

§3655. Personal injury actions; limitations; damages; notice

~~Whoever~~ A person who receives any bodily injury or suffers damage in ~~his~~ the person's property through any defect or want of repair or sufficient railing in any highway, town way, causeway or bridge may recover for the same in a civil action, to be commenced within one year from the date of receiving such injury or suffering damage, of the county or town obliged by law to repair the same, if the commissioners of such county or the municipal officers or road commissioners of such town or any person authorized by any commissioner of such county or any municipal officer or road commissioner of such town to act as a substi-

tute for either of them had 24 hours' actual notice of the defect or want of repair, but not exceeding \$6,000 in case of a town. If the sufferer had notice of the condition of such way previous to the time of the injury, ~~he~~ the sufferer cannot recover of a town unless ~~he~~ the sufferer has previously notified one of the municipal officers of the defective condition of such way. Any person who sustains injury or damage or some person in ~~his~~ the person's behalf shall, within 180 days thereafter, notify one of the county commissioners of such county or of the municipal officers of such town by letter or otherwise, in writing, setting forth ~~his~~ the person's claim for damages and specifying the nature of ~~his~~ the person's injuries and the nature and location of the defect ~~which that~~ caused such injury. If the life of any person is lost through such deficiency, ~~his~~ the person's executors or administrators may recover of such county or town liable to keep the same in repair, in a civil action, brought for the benefit of the estate of the deceased, such sum as the jury may ~~deem~~ determine reasonable as damages, if the parties liable had said notice of the deficiency ~~which that~~ caused the loss of life. In any action against a town for damages for loss of life permitted under this section, the claim for and award of damages, including costs, against a town and its employees ~~shall~~ must be disposed of as provided under Title ~~48-A~~ 18-C, section ~~2-804~~ 2-807, but ~~shall~~ may not exceed \$25,000 for each claim and \$300,000 for any and all claims arising out of a single occurrence. No damages for the loss of comfort, society and companionship of the deceased ~~shall~~ may be allowed in an action under this section. At the trial of any such action the court may, on motion of either party, order a view of the premises where the defect or want of repair is alleged when it would materially aid in a clear understanding of the case.

Sec. C-75. 24-A MRSA §2208, sub-§1, ¶A, as enacted by PL 1997, c. 677, §3 and affected by §5, is amended to read:

A. A consumer's spouse, family member or other authorized individual may sign the disclosure authorization form if:

- (1) The individual is acting under a valid written power of attorney or acting pursuant to the Uniform ~~Health care~~ Health Care Decisions Act; or
- (2) The individual is the consumer's parent or legal guardian, in which case the authorization is valid only insofar as that parent or legal guardian has the exclusive authority to consent for the health care services received by a minor for which the authorization for payment is sought and only as to those disclosures when the holder of the information can reasonably infer that the parent's or legal guardian's interest in disclosure is not adverse to the consumer's; or

Sec. C-76. 24-A MRSA §4313, sub-§14, as enacted by PL 1999, c. 742, §19, is amended to read:

14. Wrongful death action. Notwithstanding subsection 13, an enrollee or an enrollee's authorized representative may bring a cause of action against a carrier for its health care treatment decisions to seek a remedy under either this section or under Title ~~48-A~~ 18-C, section ~~2-804~~ 2-807, but may not seek remedies under both this section and Title ~~48-A~~ 18-C, section ~~2-804~~ 2-807.

Sec. C-77. 25 MRSA §1542-A, sub-§1, ¶I, as amended by PL 2015, c. 300, Pt. B, §1, is further amended to read:

I. Who is a prospective adoptive parent not the biological parent as required under Title ~~48-A~~ 18-C, section 9-304, subsection (~~a-1~~) 1;

Sec. C-78. 25 MRSA §1542-A, sub-§3, ¶H, as enacted by PL 2001, c. 52, §7, is amended to read:

H. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph I, at the request of that person and upon payment of the expenses specified under Title ~~48-A~~ 18-C, section 9-304, subsection (~~a-1~~) 1, paragraph (~~2~~) B, subparagraph (~~iii~~) (3).

Sec. C-79. 25 MRSA §2003, sub-§1, ¶D, as amended by PL 2011, c. 298, §7, is further amended to read:

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~~ Do you currently have a guardian or conservator who was appointed for you under Title 18-A 18-C, section 5 307, subsection (b) Article 5, Part 3 or 4?

(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

Sec. C-80. 26 MRSA §875, sub-§1, ¶E, as enacted by PL 2005, c. 383, §23, is amended to read:

E. The employee is unable to work because the employee is needed to provide care or assistance to one or more of the following individuals: the employee's spouse or domestic partner as defined under Title ~~18-A~~ 18-C, section 1-201, subsection ~~(40-A)~~ 14; the employee's parent; or the employee's child or child for whom the employee is the legal guardian.

Sec. C-81. 28-A MRSA §2508, sub-§2, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

2. Damages under wrongful death and survival laws. Except as otherwise provided in this Act, damages may be recovered under Title ~~18-A~~ 18-C, sections ~~2-804~~ 2-807 and 3-817, as in other tort actions, subject to the damage limit of section 2509.

Sec. C-82. 29-A MRSA §1402-A, sub-§4, ¶E, as amended by PL 2007, c. 601, §7 and affected by §9, is further amended to read:

E. Notwithstanding Title 22, section 1711-C and any other provision of law to the contrary, a health care provider licensed in this State to provide primary health care shall provide information to a federally designated organ procurement organization regarding a patient who has indicated a willingness to become an organ donor under this section, Title ~~18-A~~ 18-C, Article 5, Part 8 or Title 22, chapter 710-B if such information is provided in accordance with professional standards applicable to organ donation.

Sec. C-83. 29-A MRSA §1402-A, sub-§5, as amended by PL 2007, c. 601, §8 and affected by §9, is further amended to read:

5. Effect. An expression of willingness to make an anatomical gift under this section has the same effect as a designation under Title ~~18-A~~ 18-C, Article 5, Part 8 or Title 22, chapter 710-B. Revocation or suspension of the right to drive under this chapter does not affect the expressed willingness of a person to make an anatomical gift under this section.

Sec. C-84. 29-A MRSA §1403, as amended by PL 1995, c. 378, Pt. B, §5, is further amended to read:

§1403. Advance health care directive

Subject to available funding, the Secretary of State shall make advance ~~health care~~ health care directive forms available in offices of the Bureau of Motor Vehicles. The form must be in substantially the form provided in Title ~~18-A~~ 18-C, section ~~5-804~~ 5-805 and with the addition of the following information at the end: "Completion of this form is optional."

Sec. C-85. 30-A MRSA §183, sub-§1, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106

and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

1. Unclaimed inheritances. All sums received under Title ~~18-A~~ 18-C, section 3-914;

Sec. C-86. 32 MRSA §9405, sub-§1-A, ¶F, as enacted by PL 1987, c. 170, §8, is amended to read:

F. Submits an application ~~which that~~ contains the following, to be answered by the applicant:

- (1) Full name;
- (2) Full current address and addresses for the prior 5 years;
- (3) The date and place of birth, height, weight and color of eyes;
- (4) A record of previous issuances of, refusals to issue and renew, suspensions and revocations of a license to be a contract security company. The record of previous refusals to issue alone does not constitute cause for refusal and the record of previous refusals to renew and revocations alone constitutes cause for refusal only as provided in section 9411-A;
- (5) The following questions.
 - (a) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a crime ~~which that~~ is punishable by one year or more imprisonment or for any other crime alleged to have been committed by you with the use of a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, or of a firearm against another person?
 - (b) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense ~~which that~~ involves conduct ~~which that~~, if committed by an adult, would be punishable by one year or more of imprisonment or for any other juvenile offense alleged to have been committed by you with the use of a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, or of a firearm against another person?
 - (c) Have you ever been convicted of a crime described in division (a) or adjudicated as having committed a juvenile offense as described in division (b)?
 - (d) Is there a formal charging instrument now pending against you in this jurisdiction for any crime enumerated in section 9412?

(e) Is there a formal charging instrument now pending against you in this jurisdiction for a juvenile offense ~~which that~~ involves conduct ~~which that~~, if committed by an adult, would be a crime enumerated in section 9412?

(f) Have you within the past 5 years been convicted of a crime described in division (d) or adjudicated as having committed a juvenile offense as described in division (e)?

(g) Are you a fugitive from justice?

(h) Are you a drug abuser, drug addict or drug-dependent person?

(i) Do you have a mental disorder ~~which that~~ causes you to be potentially dangerous to yourself or others?

(j) ~~Have you been adjudicated to be an incapacitated person pursuant to~~ Do you currently have a guardian or conservator who was appointed for you under Title 18-A 18-C, article V Article 5, Parts Part 3 and or 4, and not had that designation removed by an order under Title 18-A, section 5-307, subsection (b)?

(k) Have you been dishonorably discharged from the military forces within the past 5 years?

(l) Are you an illegal alien?;

(6) A list of employees as of the date the applicant signs the application who will perform security guard functions within the State. This list ~~shall~~ must identify each employee by ~~his the employee's~~ full name, full current address and addresses for the prior 5 years and ~~his the employee's~~ date and place of birth, height, weight and color of eyes. For each employee on this list who will perform security guard functions at the site of a labor dispute or strike, the applicant shall have previously investigated the background of the employee to ensure that the employee meets all of the requirements to be a security guard as contained in section 9410-A, subsection 1. If the employee meets all of the requirements to be a security guard, the applicant shall also submit a statement, signed by the applicant, stating that the applicant has conducted this background investigation and that the employee meets the requirements contained in section 9410-A, subsection 1; and

(7) A photograph of the applicant taken within 6 months of the date the applicant affixes ~~his the applicant's~~ signature to the application; and

Sec. C-87. 32 MRSA §9410-A, sub-§1, ¶J, as enacted by PL 1987, c. 170, §12, is amended to read:

J. Has not ~~been adjudicated to be an incapacitated person had a guardian or conservator appointed for that person pursuant to Title 18-A 18-C, article V Article 5, Parts Part 3 and or 4, or if so adjudicated, has had that designation removed by an order under Title 18 A, section 5 307, subsection (b) a guardian or conservator has been appointed for that person, the guardianship or conservatorship has been terminated;~~ and

Sec. C-88. 32 MRSA §16202, sub-§12, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

12. Personal representative and guardian transactions. A transaction by a personal representative, as defined in Title ~~18-A 18-C~~, section 1-201, subsection ~~30 40~~, executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator acting in their official capacities;

Sec. C-89. 33 MRSA §480, sub-§1, as enacted by PL 1983, c. 748, §2, is amended to read:

1. Non-bona fide purchaser. The transfer requires signature pursuant to ~~the Title 18-A 18-C, section 2-202, subsections (1) and (3) section 2-208, subsection 1;~~ or

Sec. C-90. 33 MRSA §1603-116, sub-§(b), as repealed and replaced by PL 1983, c. 816, Pt. A, §40, is amended to read:

(b) A lien under this section is prior to all other liens and encumbrances on a unit except: (1) Liens and encumbrances recorded before the recordation of the declaration; (2) A first mortgage recorded before or after the date on which the assessment sought to be enforced becomes delinquent; and (3) Liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien under this section is not subject to the provisions of Title 14, section 4651 and Title ~~18-A 18-C, Part Article 2~~, as they or their equivalents may be amended or modified from time to time.

Sec. C-91. 33 MRSA §1669, sub-§1, as enacted by PL 1987, c. 734, §2, is amended to read:

1. Disclaimer; nomination of substitute custodian. A person nominated under section 1654 or designated under section 1660 as custodian may decline to serve by delivering a valid disclaimer, under Title ~~18-A 18-C, section 2-304 Article 2, Part 9~~, to the person who made the nomination to or the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nomi-

nated under section 1654, the person who made the nomination may nominate a substitute custodian under section 1654; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 1660, subsection 1. The custodian so designated has the rights of a successor custodian.

Sec. C-92. 34-A MRSA §1214-A, sub-§3, as enacted by PL 2011, c. 241, §3, is amended to read:

3. Funding. Money collected pursuant to Title ~~18-A 18-C~~, section 2-105 must be deposited into the fund.

Sec. C-93. 34-A MRSA §3040-A, sub-§1, as amended by PL 2013, c. 80, §8, is further amended to read:

1. Payment. Except as provided in subsection 4, if any client in the custody of the department dies, and no personal representative of the client's estate is appointed, the chief administrative officer may pay the balance of the deposits in the client's general client account and telephone call account, up to a maximum of \$1,000, to the surviving spouse or next of kin in accordance with Title ~~18-A 18-C~~, sections 2-101 to ~~2-114 2-113~~, to the funeral director having any bill outstanding for the burial of the decedent or to any other preferred creditor or creditors who may appear to be entitled thereto, and shall deliver personal property in the chief administrative officer's custody to the surviving spouse or next of kin in accordance with Title ~~18-A 18-C~~, sections 2-101 to ~~2-114 2-113~~.

Sec. C-94. 34-A MRSA §3040-A, sub-§4, as amended by PL 2005, c. 506, §9, is further amended to read:

4. Alternative payment. Notwithstanding subsection 1, upon presentation of an affidavit under Title ~~18-A 18-C~~, section 3-1201, the chief administrative officer shall pay the balance of any deposit left by a decedent in the department's general client account or telephone call account and deliver the decedent's personal property to the decedent's successor under Title ~~18-A 18-C~~, sections 3-1201 and 3-1202. The payments under this subsection take precedence over payments under subsection 1 to the extent of the balance of the deposits in the accounts and the personal property remaining in the custody of the chief administrative officer at the time the affidavit is presented.

Sec. C-95. 34-B MRSA §3831, sub-§6, as amended by PL 2009, c. 651, §10, is further amended to read:

6. Adults with advance health care directives. An adult with an advance health care directive authorizing psychiatric hospital treatment may be admitted on an informal voluntary basis if the conditions speci-

fied in the advance health care directive for the directive to be effective are met in accordance with the method stated in the advance health care directive or, if no such method is stated, as determined by a physician or a psychologist. If no conditions are specified in the advance health care directive as to how the directive becomes effective, the person may be admitted on an informal voluntary basis if the person has been determined to be incapacitated pursuant to Title ~~18-A~~ 18-C, Article 5, Part 8. A person may be admitted only if the person does not at the time object to the admission or, if the person does object, if the person has directed in the advance health care directive that admission to the psychiatric hospital may occur despite that person's objections. The duration of the stay in the psychiatric hospital of a person under this subsection may not exceed 5 working days. If at the end of that time the chief administrative officer of the psychiatric hospital recommends further hospitalization of the person, the chief administrative officer shall proceed in accordance with section 3863, subsection 5-A.

This subsection does not create an affirmative obligation of a psychiatric hospital to admit a person consistent with the person's advance health care directive. This subsection does not create an affirmative obligation on the part of the psychiatric hospital or treatment provider to provide the treatment consented to in the person's advance health care directive if the physician or psychologist evaluating or treating the person or the chief administrative officer of the psychiatric hospital determines that the treatment is not in the best interest of the person.

Sec. C-96. 34-B MRSA §3861, sub-§3, ¶A, as enacted by PL 2007, c. 580, §2, is amended to read:

A. If the patient's primary treating physician proposes a treatment that the physician, in the exercise of professional judgment, believes is in the best interest of the patient and if the patient lacks clinical capacity to give informed consent to the proposed treatment and the patient is unwilling or unable to comply with the proposed treatment, the patient's primary treating physician shall request in writing a clinical review of the proposed treatment by a clinical review panel. For a patient at a state mental health institute, the request must be made to the superintendent of the institute or the designee of the superintendent. For a patient at a designated nonstate mental health institution, the request must be made to the chief administrative officer or the designee of the chief administrative officer. The request must include the following information:

- (1) The name of the patient, the patient's diagnosis and the unit on which the patient is hospitalized;

- (2) The date that the patient was committed to the institution or institute and the period of the court-ordered commitment;

- (3) A statement by the primary treating physician that the patient lacks capacity to give informed consent to the proposed treatment. The statement must include documentation of a 2nd opinion that the patient lacks that capacity, given by a professional qualified to issue such an opinion who does not provide direct care to the patient but who may work for the institute or institution;

- (4) A description of the proposed course of treatment, including specific medications, routes of administration and dose ranges, proposed alternative medications or routes of administration, if any, and the circumstances under which any proposed alternative would be used;

- (5) A description of how the proposed treatment will benefit the patient and ameliorate identified signs and symptoms of the patient's psychiatric illness;

- (6) A listing of the known or anticipated risks and side effects of the proposed treatment and how the prescribing physician will monitor, manage and minimize the risks and side effects;

- (7) Documentation of consideration of any underlying medical condition of the patient that contraindicates the proposed treatment; and

- (8) Documentation of consideration of any advance ~~health care~~ health care directive given in accordance with Title ~~18-A~~ 18-C, section ~~5-802~~ 5-803 and any declaration regarding medical treatment of psychotic disorders executed in accordance with section 11001.

Sec. C-97. 34-B MRSA §3862, sub-§1, ¶B, as amended by PL 2009, c. 651, §11, is further amended to read:

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination by a medical practitioner as provided in section 3863 or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in Title ~~18-A~~ 18-C, section ~~5-802~~ 5-803, subsection ~~(d)~~ 4 to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective.

Sec. C-98. 34-B MRSA §5001, sub-§4, ¶B, as enacted by PL 1983, c. 459, §7, is amended to read:

B. Seeking guardianship or a protective order under Title ~~18-A~~ 18-C, Article 5.

Sec. C-99. 34-B MRSA §5001, sub-§7, as amended by PL 1995, c. 560, Pt. K, §40, is further amended to read:

7. Ward. "Ward" means a person for whom the department has been duly appointed guardian under Title ~~18-A~~ 18-C, ~~article V~~ Article 5, Part ~~6~~ 7.

Sec. C-100. 35-A MRSA §4355, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Trustee. The decommissioning fund committee shall select a trustee or trustees to execute the policies set by the decommissioning fund committee and manage the money within a decommissioning trust fund in order to ensure that it will be available when needed and, insofar as possible, consistent with protection of the principal, so that it may grow to keep pace with inflation or faster. Preference may be given to financial institutions incorporated in the State if consistent with their fiduciary responsibility, but only if they meet the criteria for trustees established by the decommissioning fund committee. That committee may, by a majority vote of its entire membership, change trustees at any time. Any trustee ~~shall be~~ is subject to the same duties and may exercise the same powers as trustees under Title ~~18-A~~ 18-C, ~~article VII~~ Article 7, and the provisions of the decommissioning trust to the extent that they are not inconsistent with this subchapter. The trustee may appoint subsidiary financial managers, subject to approval by the decommissioning fund committee. Any fees charged by the trustee ~~shall be~~ are subject to review by the commission.

Sec. C-101. 35-A MRSA §4391, sub-§5, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

5. Trustee. "Trustee" means a fiduciary as defined under Title ~~18-A~~ 18-C, section 1-201, which fiduciary shall administer the spent fuel disposal trust funds subject to sections 4392 and 4393 and in accordance with Title ~~18-A~~ 18-C, ~~article VII~~ Article 7.

Sec. C-102. 35-A MRSA §4392, sub-§3, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

3. Trustee. The licensee shall select a trustee or trustees to manage the money within the fund to ensure that it will be available when needed. Preference may be given to financial institutions incorporated in the State if such a determination can be made consistent with the fiduciary responsibility of the trustees. The licensee may change trustees at any time upon appropriate notice. Trustees ~~shall be~~ are subject to the

same duties and may exercise the same powers as trustees under Title ~~18-A~~ 18-C, ~~article VII~~ Article 7, to the extent that they are not inconsistent with this subchapter. The trustee may appoint subsidiary financial managers, subject to the approval of the licensee.

Sec. C-103. 36 MRSA §606, as amended by PL 2017, c. 288, Pt. A, §39, is further amended to read:

§606. Tax priority; deceased's personal property

If a personal property tax has been assessed upon the estate of a deceased person, or if a person assessed for a personal property tax has died, the personal representative, after the personal representative has satisfied the first 4 priorities set forth in Title ~~18-A~~ 18-C, section 3-805, shall, from any estate that has come to the personal representative's hands in such capacity, if such estate is sufficient therefor, pay the personal property tax so assessed to the personal representative under Title ~~18-A~~ 18-C, section 3-709. In default of such payment the personal representative is personally liable for the tax to the extent of the estate that passed through the personal representative's hands that was not used to satisfy claims or expenses with a higher priority. To the extent that the personal representative is not assessed, the successors to the decedent's taxed property shall pay the tax assessed.

Sec. C-104. 36 MRSA §4079, as amended by PL 2007, c. 154, §1, is further amended to read:

§4079. Civil action by State; bond

Personal representatives are liable to the State on their administration bonds for all taxes assessable under this chapter and interest on those taxes. Whenever no administration bond is otherwise required, and except as otherwise provided in this section, the ~~Judge of Probate~~ Judge of Probate Court, notwithstanding any provision of Title ~~18-A~~ 18-C, shall require a bond payable to the ~~judge or the judge's successor court~~ court sufficient to secure the payment of all estate taxes and interest conditioned in substance to pay all estate taxes due to the State from the estate of the deceased with interest thereon. A bond to secure the payment of estate taxes is not required when the ~~Judge of Probate~~ Court finds that any estate tax due and to become due the State is reasonably secured by the lien upon real estate as provided in this chapter or by any other adequate security. An action for the recovery of estate taxes and interest lies on either of the bonds.

Sec. C-105. 36 MRSA §4118, as enacted by PL 2011, c. 380, Pt. M, §9, is amended to read:

§4118. Civil action by State; bond

Personal representatives are liable to the State on their administration bonds for all taxes assessable under this chapter and interest on those taxes. If no administration bond is otherwise required and except as otherwise provided in this section, the ~~judge of probate~~

Probate Court, notwithstanding any provision of Title ~~18-A 18-C~~, shall require a bond payable to the ~~judge or the judge's successor~~ court sufficient to secure the payment of all estate taxes and interest conditioned in substance to pay all estate taxes due to the State from the estate of the deceased with interest thereon. A bond to secure the payment of estate taxes is not required when the ~~judge of probate~~ Probate Court finds that any estate tax due and to become due the State is reasonably secured by the lien upon real estate as provided in this chapter or by any other adequate security. An action for the recovery of estate taxes and interest lies on either of the bonds.

Sec. C-106. 36 MRSA §4641-C, sub-§11, as amended by PL 2005, c. 397, Pt. C, §21 and affected by §22, is further amended to read:

11. Deeds of distribution. Deeds of distribution made pursuant to Title ~~18-A or Title 18-B or Title 18-C~~;

Sec. C-107. 36 MRSA §4641-D, sub-§6, as enacted by PL 1987, c. 568, §2, is amended to read:

6. Deed of distribution. Any deed of distribution made pursuant to Title ~~18-A 18-C~~.

Sec. C-108. 38 MRSA §1362, sub-§1-D, ¶A, as enacted by PL 1993, c. 355, §59, is amended to read:

A. Acting in any of the following capacities: a personal representative as defined in Title ~~18-A 18-C~~, section 1-201; a voluntary executor or administrator; a guardian; a conservator; a trustee under a will or intervivos instrument creating a trust of a donative type associated with probate practice where the trustee takes title to, otherwise controls or manages, property for the purpose of protecting or conserving that property; a trustee pursuant to an indenture agreement or similar financing agreement; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; and an assignee or trustee acting under an assignment made for the benefit of creditors; and

Sec. C-109. 39-A MRSA §104, first ¶, as amended by PL 1995, c. 297, §1, is further amended to read:

An employer who has secured the payment of compensation in conformity with sections 401 to 407 is exempt from civil actions, either at common law or under sections 901 to 908; Title 14, sections 8101 to 8118; and Title ~~18-A 18-C~~, section ~~2-804 2-807~~, involving personal injuries sustained by an employee arising out of and in the course of employment, or for death resulting from those injuries. An employer that uses a private employment agency for temporary help services is entitled to the same immunity from civil actions by employees of the temporary help service as

is granted with respect to the employer's own employees as long as the temporary help service has secured the payment of compensation in conformity with sections 401 to 407. "Temporary help services" means a service where an agency assigns its own employees to a 3rd party to work under the direction and control of the 3rd party to support or supplement the 3rd party's work force in work situations such as employee absences, temporary skill shortages, seasonal work load conditions and special assignments and projects. These exemptions from liability apply to all employees, supervisors, officers and directors of the employer for any personal injuries arising out of and in the course of employment, or for death resulting from those injuries. These exemptions also apply to occupational diseases sustained by an employee or for death resulting from those diseases. These exemptions do not apply to an illegally employed minor as described in section 408, subsection 2.

PART D

Sec. D-1. 22 MRSA §4038-E, sub-§11, ¶A, as amended by PL 2011, c. 420, Pt. I, §4 and affected by §5, is further amended to read:

A. An order granting the adoption of the child by the permanency guardian divests the consenting parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except ~~the inheritance rights between the child and the parent~~ an adoptee inherits from the adoptee's former parents if so provided in the adoption decree.

Sec. D-2. 22 MRSA §4056, sub-§1, as corrected by RR 2009, c. 2, §57, is amended to read:

1. Parent and child divested of rights. An order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except ~~the inheritance rights between the child and parent~~ child inherits from the child's former parents if so provided in the order.

PART E

Sec. E-1. 33 MRSA §1021, sub-§6, as enacted by PL 1989, c. 238, §1, is amended to read:

6. Transfer. "Transfer" includes, but is not limited to, a transfer under the Uniform Real Property Transfer on Death Act, but does not include testamentary transfers, which are outside the scope of this chapter. For purposes of this chapter, a transfer under the Uniform Real Property Transfer on Death Act occurs when the deed is executed or recorded.

Sec. E-2. 36 MRSA §4641-C, sub-§19, as amended by PL 2001, c. 559, Pt. I, §7 and affected by §15, is further amended to read:

19. Change in identity or form of ownership. Any transfer of real property, whether accomplished by deed, conversion, merger, consolidation or otherwise, if it consists of a mere change in identity or form of ownership of an entity. This exemption is limited to those transfers when no change in beneficial ownership is made and may include transfers involving corporations, partnerships, limited liability companies, trusts, estates, associations and other entities; ~~and~~

Sec. E-3. 36 MRSA §4641-C, sub-§20, as enacted by PL 2001, c. 559, Pt. I, §8 and affected by §15, is amended to read:

20. Controlling interests. Transfers of controlling interests in an entity with a fee interest in real property if the transfer of the real property would qualify for exemption if accomplished by deed of the real property between the parties to the transfer of the controlling interest; and

Sec. E-4. 36 MRSA §4641-C, sub-§21 is enacted to read:

21. Transfers pursuant to transfer on death deed. Any transfer of real property effectuated by a transfer on death deed pursuant to Title 18-C, Article 6, Part 4.

Sec. E-5. 36 MRSA §4641-D, sub-§4, as amended by PL 2007, c. 437, §14, is further amended to read:

4. Deed affecting previous deed. Any deed that, without additional consideration, confirms, corrects, modifies or supplements a previously recorded deed; ~~and~~

Sec. E-6. 36 MRSA §4641-D, sub-§6, as enacted by PL 1987, c. 568, §2, is amended to read:

6. Deed of distribution. Any deed of distribution made pursuant to Title ~~18-A, 18-C;~~ and

Sec. E-7. 36 MRSA §4641-D, sub-§7 is enacted to read:

7. Transfer on death deed. Any transfer on death deed under Title 18-C, Article 6, Part 4.

PART F

Sec. F-1. Effective date. Parts A to E of this Act take effect July 1, 2019.

PART G

Sec. G-1. Maine Comments. The Probate and Trust Law Advisory Commission, in consultation with the Family Law Advisory Commission and other interested parties, shall compose Maine Uniform Probate Code Comments that explain and aid in the interpretation of the Maine Uniform Probate Code as enacted by this Act. The Probate and Trust Law Advisory Commission shall report the recommended Maine Uniform Probate Code Comments to the joint standing

committee of the 129th Legislature having jurisdiction over judiciary matters no later than January 15, 2019.

Sec. G-2. Legislation. The joint standing committee of the 129th Legislature having jurisdiction over judiciary matters may report out legislation to the First Regular Session of the 129th Legislature to correct errors and inconsistencies created by recent legislation and this Act and address any additional issues raised in the recodification and revision of the Maine Probate Code.

Sec. G-3. Effective date. This Part is effective 90 days after the adjournment of the Second Regular Session of the 128th Legislature.

See title page for effective date, unless otherwise indicated.

CHAPTER 403

H.P. 560 - L.D. 780

**An Act Authorizing the
Deorganization of Cary
Plantation**

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

PART A

Sec. A-1. 12 MRSA §12708, sub-§1, ¶B, as amended by PL 2013, c. 408, §21, is further amended to read:

B. The following areas are classified as state-owned wildlife management areas, or "WMAs":

- (1) Blanchard/AuClair WMA (Roach River Corridor) - T1 R14 WELS - Piscataquis County;
- (2) Major Gregory Sanborn WMA - Brownfield, Denmark, Fryeburg - Oxford County;
- (3) George Bucknam WMA (Belgrade Stream) - Mt. Vernon - Kennebec County;
- (4) Caesar Pond WMA - Bowdoin - Sagadahoc County;
- (5) Chesterville WMA - Chesterville - Franklin County;
- (6) Coast of Maine WMA - all state-owned coastal islands that are owned or managed by the Department of Inland Fisheries and Wildlife;
- (7) Dickwood Lake WMA - Eagle Lake - Aroostook County;
- (8) Francis D. Dunn WMA (Sawtelle Deadwater) - T6 R7 WELS - Penobscot County;

- (9) Fahi Pond WMA - Embden - Somerset County;
- (10) Lyle Frost WMA (formerly Scammon) - Eastbrook, Franklin - Hancock County;
- (11) Alonzo H. Garcelon WMA (Mud Mill Flowage) - Augusta, Windsor, Vassalboro, China - Kennebec County;
- (12) Great Works WMA - Edmunds Township - Washington County;
- (13) Jamies Pond WMA - Manchester, Farmingdale, Hallowell - Kennebec County;
- (14) Jonesboro WMA - Jonesboro - Washington County;
- (15) Earle R. Kelley WMA (Dresden Bog) - Alna, Dresden - Lincoln County;
- (16) Kennebunk Plains WMA - Kennebunk - York County;
- (17) Bud Leavitt WMA (Bull Hill) - Atkinson, Charleston, Dover-Foxcroft, Garland - Penobscot County and Piscataquis County;
- (18) Gene Letourneau WMA (Frye Mountain) - Montville, Knox, Morrill - Waldo County;
- (19) Long Lake WMA - St. Agatha - Aroostook County (all of Long Lake within the Town of St. Agatha);
- (20) Madawaska WMA - Palmyra - Somerset County;
- (20-A) Maine Youth Conservation WMA - T32MD - Hancock County;
- (21) Mainstream WMA - Cambridge, Ripley - Somerset County;
- (22) Lt. Gordon Manuel WMA - Hodgdon, Cary ~~Plantation~~ Township, Linneus - Aroostook County;
- (23) Maynard F. Marsh WMA (Killick Pond) - Hollis, Limington - York County;
- (24) Mercer Bog WMA - Mercer - Somerset County;
- (25) Merrymeeting Bay WMA - Dresden, Bowdoinham, Woolwich, Bath, Topsham - Lincoln County and Sagadahoc County;
- (26) Morgan Meadow WMA - Raymond - Cumberland County;
- (27) Mt. Agamenticus WMA - York, South Berwick - York County;
- (28) Muddy River WMA - Topsham - Sagadahoc County;
- (29) Narraguagus Junction WMA - Cherryfield - Washington County;
- (30) Old Pond Farm WMA - Maxfield, Howland - Penobscot County;
- (31) Orange River WMA - Whiting - Washington County;
- (32) Peaks Island WMA - Portland - Cumberland County;
- (33) Pennamaquam WMA - Pembroke, Charlotte - Washington County;
- (34) Steve Powell WMA - Perkins Township - Sagadahoc County (being the islands in the Kennebec River near Richmond known as Swan Island and Little Swan Island, formerly known as Alexander Islands);
- (35) David Priest WMA (Dwinal Pond) - Lee, Winn - Penobscot County;
- (36) James Dorso Ruffingham Meadow WMA - Montville, Searsmont - Waldo County;
- (37) St. Albans WMA - St. Albans - Somerset County;
- (38) Sandy Point WMA - Stockton Springs - Waldo County;
- (39) Scarborough WMA - Scarborough, Old Orchard Beach, Saco - Cumberland County and York County;
- (40) Steep Falls WMA - Standish, Baldwin - Cumberland County;
- (41) Tyler Pond WMA - Manchester, Augusta - Kennebec County;
- (42) Vernon S. Walker WMA - Newfield, Shapleigh - York County;
- (43) R. Waldo Tyler Weskeag Marsh WMA - South Thomaston, Thomaston, Rockland, Owl's Head, Friendship - Knox County;
- (43-A) Kennebec River Estuary WMA - Arrowsic, Bath, Georgetown, Phippsburg, West Bath, Woolwich - Sagadahoc County;
- (43-B) Tolla Wolla WMA - Livermore - Androscoggin County;
- (43-C) Green Point WMA - Dresden - Lincoln County;
- (43-D) Hurds Pond WMA - Swanville - Waldo County;
- (43-E) Sherman Lake WMA - Newcastle, Damariscotta - Lincoln County;
- (43-F) Ducktrap River WMA - Belmont, Lincolnville - Waldo County;

(45) Stump Pond WMA - New Vineyard - Franklin County;

(46) Bog Brook WMA - Beddington, Deblois - Washington County;

(47) Cobscook Bay WMA - Lubec, Pembroke, Perry, Trescott Township - Washington County;

(48) Mattawamkeag River System WMA - Drew Plantation, Kingman Township, Prentiss Township, Webster Township - Penobscot County;

(49) Booming Ground WMA - Forest City - Washington County;

(50) Butler Island WMA - Ashland - Aroostook County;

(51) Pollard Flat WMA - Masardis - Aroostook County;

(52) Caribou Bog WMA - Old Town, Orono - Penobscot County;

(53) Delano WMA - Monson - Piscataquis County;

(54) Egypt Bay WMA - Hancock - Hancock County;

(55) Spring Brook WMA - Hancock - Hancock County;

(56) Strong WMA - Strong - Franklin County;

(57) Plymouth Bog WMA - Plymouth - Penobscot County; and

(58) Such other areas as the commissioner designates, by rules adopted in accordance with section 12701, as state-owned wildlife management areas.

Sec. A-2. 20-A MRSA §8451, sub-§2, ¶B, as amended by PL 2013, c. 390, Pt. A, §1 and affected by §2, is further amended to read:

B. Region 2. SOUTHERN AROOSTOOK COUNTY. Units located in this region include:

(2) Benedicta Township;

(3) Orient;

(4) Regional School Unit No. 29 doing business as School Administrative District No. 29 (Hammond, Houlton, Littleton and Monticello);

(5) Regional School Unit No. 50 (Crystal, Dyer Brook, Hersey, Island Falls, Merrill, Moro Plantation, Mount Chase, Oakfield, Patten, Sherman, Smyrna and Stacyville);

(6) Regional School Unit No. 70 doing business as School Administrative District No. 70 (Amity, ~~Cary Plantation~~, Haynesville and Hodgdon) and Linneus, Ludlow and New Limerick; and

(7) Regional School Unit No. 84 doing business as School Administrative District No. 14 (Danforth and Weston).

Sec. A-3. 36 MRSA §4602, sub-§3, ¶D, as repealed and replaced by PL 2001, c. 164, §2, is amended to read:

D. District 4: Amity, Benedicta, Cary ~~Plantation~~ Township, Crystal, Dyer Brook, Hammond Plantation, Hershey, Hodgdon, Houlton, Island Falls, Linneus, Littleton, Ludlow, Merrill, Monticello, New Limerick, Oakfield, Patten, Sherman and Sherman Mills; and

Sec. A-4. Effective date. This Part takes effect July 1, 2019, if the legal voters of Cary Plantation approve the referendum under Part B, section 8.

PART B

Sec. B-1. Deorganization of Cary Plantation. Notwithstanding any contrary requirement of the Maine Revised Statutes, Title 30-A, chapter 302, in accordance with Title 30-A, section 7207 a majority of the voters in Cary Plantation approve the deorganization procedure developed in accordance with Title 30-A, section 7205 and if the question of Cary Plantation's deorganization is approved by the registered voters of Cary Plantation pursuant to section 8 of this Part, Cary Plantation in Aroostook County is deorganized, except that the corporate existence, powers, duties and liabilities of the plantation survive for the purposes of prosecuting and defending all pending suits to which the plantation is, or may be, a party and all needful process arising out of any suits, including provisions for the payment of all or any judgments or debts that may be rendered against the plantation or exist in favor of any creditor.

Sec. B-2. Financial obligations and other liabilities. Any financial obligations or other liabilities that were incurred by Cary Plantation as a municipality or that were incurred by Cary Plantation as a member of School Administrative District No. 70 or Regional School Unit No. 70 are excepted and reserved in accordance with the Maine Revised Statutes, Title 30-A, section 7303 and remain liabilities for the inhabitants of lawful age residing in the territory included in the deorganized Cary Township for the duration of the liabilities. The State Tax Assessor shall assess taxes against the property owners in the deorganized municipality of Cary Township to provide funds to satisfy any municipal or educational obligations or other liabilities. These financial obligations or other liabilities are not the responsibility of either the Department of Education or the taxpayers in the Unor-

ganized Territory Tax District as described in Title 36, chapter 115.

Sec. B-3. Deorganization procedure. The deorganization of Cary Plantation must be conducted in accordance with the approved deorganization procedure developed in accordance with the Maine Revised Statutes, Title 30-A, section 7205 for the municipality.

Sec. B-4. Unexpended school funds. The treasurer of the plantation or any other person who has custody of the funds of the plantation shall pay the Treasurer of State all unexpended school funds that, together with the credits due the plantation for school purposes, are to be used by the State Tax Assessor to settle any school obligations incurred by the plantation before deorganization. The State Tax Assessor shall approve any written requests or invoices for payments and submit the approved documents to the fiscal administrator of the unorganized territory within the Office of the State Auditor to process through the Office of the State Controller. Any unexpended school funds remaining with the Treasurer of State after all the obligations have been met must be deposited to the Unorganized Territory Education and Services Fund, as directed in the Maine Revised Statutes, Title 36, chapter 115.

Sec. B-5. Unexpended municipal funds and property. The treasurer of the plantation or any other person who has custody of the funds of the plantation shall pay the Treasurer of State all unexpended funds of the plantation that, together with the credits due the plantation for its purposes, are to be used by the State Tax Assessor to settle any obligations of the plantation incurred by the plantation before deorganization. The State Tax Assessor shall approve any written requests or invoices for payments and shall submit the approved documents to the fiscal administrator of the unorganized territory within the Office of the State Auditor to process through the Office of the State Controller. Pursuant to the Maine Revised Statutes, Title 30-A, section 7304, at the end of a 5-year period during which the powers, duties and obligations relating to the affairs of the plantation are vested in the State Tax Assessor or when in the judgment of the State Tax Assessor final payment of all known obligations against the plantation has been made, any funds that have not been expended must be deposited with the county commissioners of Aroostook County as undedicated revenue for the unorganized territory fund of that county.

Any property of the plantation that has not been sold must be held by the State in trust for the unorganized territory or transferred to Aroostook County to be held in trust for the unorganized territory. Income from the use or sale of that property held by the State must be credited to or deposited in the Unorganized Territory Education and Services Fund under Title 36,

chapter 115. Income from the use or sale of that property held by Aroostook County must be credited to the unorganized territory fund of the county pursuant to Title 36, section 1604, subsection 4.

Sec. B-6. Provision of education services. Notwithstanding any other law, education in the unorganized territory of Cary Township must be provided under the direction of the Commissioner of Education as described in the Maine Revised Statutes, Title 20-A, chapter 119 and must meet the general standards for elementary and secondary schooling and special education established pursuant to Title 20-A. The provisions described in subsections 1 to 3 must be implemented at the time of deorganization.

1. Students in prekindergarten to grade 12 whose parents or legal guardians are legal residents of the unorganized territory of Cary Township must be provided educational services at Regional School Unit No. 70 school facilities located in the Town of Hodgdon. Transportation services to and from school must be provided under the direction of the Department of Education.

2. Special education services must be provided to eligible resident students as required by federal and state laws, rules and regulations.

3. Career and technical education must be provided to eligible resident students pursuant to Title 20-A, section 3253-A.

Tuition to schools other than those identified in this section may be provided on behalf of resident students with the prior approval of the director of state schools within the Department of Education. Tuition payments may not exceed the limits established in Title 20-A, section 3304 and transportation is the responsibility of the parents or legal guardians. The receiving school must be approved by the Commissioner of Education for the purpose of tuition.

The provision of educational services in this section is subject to modification in response to educational conditions.

Sec. B-7. Assessment of taxes. The State Tax Assessor shall assess the real and personal property taxes in Cary Plantation as of April 1, 2019, as provided in the Maine Revised Statutes, Title 36, section 1602.

Sec. B-8. Referendum; certificate to Secretary of State. This Part takes effect 90 days after its approval only for the purpose of permitting its submission by the municipal officers to the legal voters of Cary Plantation by ballot at the next statewide election held in the month of November. This election must be called, advertised and conducted according to the Maine Revised Statutes, Title 30-A, sections 2528 and 2532. The Cary Plantation clerk shall prepare the

required ballots on which the clerk shall reduce the subject matter of this Part to the following question:

"Shall Cary Plantation be deorganized?"

The voters shall indicate their opinion on this question by a cross or check mark placed against the word "Yes" or "No." Before becoming effective, the question posed to voters must be approved by at least 2/3 of the legal voters casting ballots during the state-wide election, and the total number of votes that are cast for and against the deorganization in the election must equal or exceed 50% of the total number of votes cast in the plantation for Governor at the last gubernatorial election.

The municipal officers of Cary Plantation shall declare the result of the vote. The clerk of Cary Plantation shall file a certificate of the election result with the Secretary of State within 10 days from the date of the election.

Sec. B-9. Effective date. Sections 1 to 7 of this Part take effect July 1, 2019 if the legal voters of Cary Plantation approve the referendum under section 8 of this Part.

PART C

Sec. C-1. Register and transmit copy of approved deorganization procedure. Before the effective date of the deorganization of Cary Plantation pursuant to Part B, the fiscal administrator of the unorganized territory within the Office of the State Auditor shall transmit a copy of the approved deorganization procedure developed in accordance with the Maine Revised Statutes, Title 30-A, section 7205 to the Aroostook County administrator, and shall register the approved deorganization procedure with the Aroostook County Registry of Deeds.

Sec. C-2. Effective date. This Part takes effect upon approval of the referendum under Part B, section 8.

Effective pending referendum.

**CHAPTER 404
H.P. 607 - L.D. 858**

**An Act To Strengthen the Law
Regarding Dangerous Dogs
and Nuisance Dogs**

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 7 MRSA §3907, sub-§8-B is enacted to read:

8-B. Bodily injury. "Bodily injury" has the same meaning as in Title 17-A, section 2, subsection 5.

Sec. 2. 7 MRSA §3907, sub-§12-D, as amended by PL 2011, c. 100, §3, is repealed and the following enacted in its place:

12-D. Dangerous dog. "Dangerous dog" means a dog or wolf hybrid that causes the death of or inflicts serious bodily injury on an individual or a domesticated animal who is not trespassing on the dog or wolf hybrid owner's or keeper's premises at the time of the injury or death; a dog or wolf hybrid that causes a reasonable and prudent person who is not on the dog or wolf hybrid owner's or keeper's premises and is acting in a reasonable and nonaggressive manner to fear imminent serious bodily injury by assaulting or threatening to assault that individual or individual's domesticated animal; or a dog or wolf hybrid that inflicts bodily injury on an individual or a domesticated animal who is not trespassing on the dog or wolf hybrid owner's or keeper's premises at the time of the injury and has previously been determined by a court of competent jurisdiction to be a nuisance dog.

"Dangerous dog" does not include:

- A. A dog certified by the State and used for law enforcement use;
- B. A dog or wolf hybrid that injures or threatens to assault an individual who is on the dog or wolf hybrid owner's or keeper's premises if the dog or wolf hybrid has no prior history of assault and was provoked by the individual immediately prior to the injury or threatened assault; or
- C. A dog or wolf hybrid that inflicts serious bodily injury on or causes the death of an individual who is committing a crime against an individual or property owned by the dog or wolf hybrid owner or keeper.

For the purposes of this definition, "dog or wolf hybrid owner's or keeper's premises" means the residence or residences, including buildings and land and motor vehicles, belonging to the owner or keeper of the dog or wolf hybrid.

Sec. 3. 7 MRSA §3907, sub-§20-A is enacted to read:

20-A. Nuisance dog. "Nuisance dog" means a dog or wolf hybrid that causes bodily injury, other than serious bodily injury, to an individual or a domesticated animal who is not trespassing on the dog or wolf hybrid owner's or keeper's premises at the time of the injury; a dog or wolf hybrid that causes a reasonable and prudent person who is not on the dog or wolf

hybrid owner's or keeper's premises and is acting in a reasonable and nonaggressive manner to fear bodily injury, other than serious bodily injury, by assaulting or threatening to assault that individual or individual's domesticated animal; or a dog or wolf hybrid that causes damage to property or crops not owned by the dog or wolf hybrid owner or keeper while the dog or wolf hybrid is not on the owner's or keeper's premises.

"Nuisance dog" does not include:

A. A dog certified by the State and used for law enforcement use;

B. A dog or wolf hybrid that injures or threatens to assault an individual who is on the dog or wolf hybrid owner's or keeper's premises if the dog or wolf hybrid has no prior history of assault and was provoked by the individual immediately prior to the injury or threatened assault; or

C. A dog or wolf hybrid that inflicts bodily injury on an individual who is committing a crime against an individual or property owned by the dog or wolf hybrid owner or keeper.

For the purposes of this definition, "dog or wolf hybrid owner's or keeper's premises" means the residence or residences, including buildings and land and motor vehicles, belonging to the owner or keeper of the dog or wolf hybrid.

Sec. 4. 7 MRSA §3907, sub-§24-B is enacted to read:

24-B. Serious bodily injury. "Serious bodily injury" has the same meaning as in Title 17-A, section 2, subsection 23.

Sec. 5. 7 MRSA §3922, sub-§5, as amended by PL 1997, c. 704, §9, is further amended to read:

5. Form of license. The license must state the breed, sex, color and markings of the dog, whether the animal is a dog or wolf hybrid, whether the dog has been determined by a court of competent jurisdiction to be a dangerous dog or a nuisance dog and the name and address of the owner or keeper. If the person applying for a license declares that the dog is a wolf hybrid, the license must state that the dog is a wolf hybrid. The license must be issued in triplicate and the original must be given to the applicant and the remaining 2 copies must be retained by the municipal clerk or dog recorder.

Sec. 6. 7 MRSA §3923-A, sub-§5 is enacted to read:

5. Dogs determined to be dangerous dogs or nuisance dogs by the court. The owner or keeper of a dog determined by a court of competent jurisdiction to be a dangerous dog shall pay a fee of \$100 to the municipal clerk or a dog licensing agent. The municipal clerk or dog licensing agent shall retain a \$1 recording fee, deposit \$98 in the municipality's animal welfare

account established in accordance with section 3945 and pay the remaining \$1 to the department for deposit in the Animal Welfare Fund.

The owner or keeper of a dog determined by a court of competent jurisdiction to be a nuisance dog shall pay a fee of \$30 to the municipal clerk or a dog licensing agent. The municipal clerk or dog licensing agent shall retain a \$1 recording fee, deposit \$28 in the municipality's animal welfare account established in accordance with section 3945 and pay the remaining \$1 to the department for deposit in the Animal Welfare Fund.

A dog determined by a court of competent jurisdiction to be a dangerous dog or a nuisance dog does not qualify for the exemptions from fees under subsection 3.

An owner or keeper of a dog determined by a court of competent jurisdiction to be a dangerous dog applying for a license for that dog after January 31st shall pay to the municipal clerk, dog licensing agent or dog recorder a late fee of \$150 in addition to the annual license fee paid in accordance with this subsection.

An owner or keeper of a dog determined by a court of competent jurisdiction to be a nuisance dog applying for a license for that dog after January 31st shall pay to the municipal clerk, dog licensing agent or dog recorder a late fee of \$70 in addition to the annual license fee paid in accordance with this subsection.

The clerk, dog licensing agent or dog recorder shall deposit all late fees collected under this subsection into the municipality's animal welfare account established in accordance with section 3945.

Sec. 7. 7 MRSA §3925 is enacted to read:

§3925. Dog licensing database

The department shall develop and implement a dog licensing database in coordination with any electronic dog licensing project implemented pursuant to section 3923-G. The database must track all dog licensing throughout the State and allow municipalities and animal control officers to reunite lost dogs with owners and track dogs that have been determined by a court of competent jurisdiction to be dangerous dogs and nuisance dogs pursuant to chapter 727. The department shall provide all municipalities and dog licensing agents with access to the database at no cost.

Sec. 8. 7 MRSA §3942, first ¶, as amended by PL 2015, c. 223, §11, is further amended to read:

Municipal clerks shall issue dog licenses in accordance with chapter 721, receive the license fees and pay to the department \$10 for dogs capable of producing young and \$3 from each license fee received for dogs incapable of producing young. The clerks shall keep a record of all licenses issued by them, with the names of the owners or keepers of dogs licensed and the sex, registered numbers and description of all dogs except those covered by a kennel license and whether

the dogs have been determined by a court of competent jurisdiction to be dangerous dogs or nuisance dogs. The clerks shall make a monthly report to the department on a department-approved form of all dog licenses issued and fees received.

Sec. 9. 7 MRSA §3947, first ¶, as amended by PL 2009, c. 343, §20, is further amended to read:

Each municipality shall appoint one or more animal control officers whose duties are enforcement of sections 3911, 3912, 3916, 3921, 3924, 3948, 3950, 3950-A, ~~3952~~ 3952-A and 4041 and Title 17, section 1023, responding to reports of animals suspected of having rabies in accordance with Title 22, sections 1313 and 1313-A and any other duties to control animals as the municipality may require. A municipality may appoint an employee of an animal shelter as an animal control officer as long as the person meets the qualifications and training requirements of this section.

Sec. 10. 7 MRSA §3948, sub-§4 is enacted to read:

4. Reporting. By January 31st of each year, a municipality shall report to the animal welfare program of the department all complaints related to animal control incidents for the prior calendar year. The report must include the number and type of animal complaints received and responded to by municipal animal control officers, law enforcement officers or municipal officials and the outcomes of each investigation. The reports must be on forms provided by the department.

Sec. 11. 7 MRSA §3952, as amended by PL 2011, c. 559, Pt. A, §4, is repealed.

Sec. 12. 7 MRSA §3952-A is enacted to read:
§3952-A. Keeping a dangerous dog or a nuisance dog

A person who owns or keeps a dog determined by a court of competent jurisdiction to be a dangerous dog or a nuisance dog commits a civil violation for which the court shall adjudge a fine of not less than \$250 and not more than \$5,000, plus costs, none of which may be suspended. All fines, other than costs, must be paid to the municipality where the dog resides pursuant to section 3910-A and be placed in the municipality's animal welfare account established in accordance with section 3945.

1. Procedure. A person who is assaulted or threatened with bodily injury by a dog or a person witnessing such an assault or threatened assault against a person or domesticated animal or a person with knowledge of such an assault or threatened assault against a minor, or a person whose property or crops have been damaged by a dog, within 30 days of the incident, may make written complaint to the sheriff, local law enforcement officer or animal control

officer that the dog is a dangerous dog or a nuisance dog. For the purposes of this chapter, "domesticated animal" includes, but is not limited to, livestock as defined in section 3907, subsection 18-A.

A representative of the sheriff's department, a local law enforcement officer or an animal control officer appointed by the municipality shall investigate and document the complaint. Upon completion of the investigation of the complaint, the investigator may issue a civil violation summons for keeping a dangerous dog or a nuisance dog.

All records of the outcome of the investigation must be kept by the municipality for the life of the dog, plus 2 years.

2. Dangerous dog finding. If, upon hearing, the court finds that a dog is a dangerous dog, the court shall impose a fine and may order any one or more of the following that the court determines is appropriate:

A. Order the dog to be euthanized if the court finds that the dog:

(1) Has killed, maimed or inflicted serious bodily injury upon a person or has a history of a prior assault or a prior finding by the court of being a dangerous dog; and

(2) Presents a clear threat to public safety;

B. Order that the owner or keeper of the dog, if that person has previously been adjudicated of having violated this section, may not own, possess or have on that person's premises any dogs for a period of time, which may be permanent;

C. Order the owner or keeper of the dog, if the owner or keeper is allowed to keep the dog, or any other person keeping the dog, to post dangerous dog signs, visible from all directions and provided by the department, around the entrance of the premises where the dog resides and to notify in writing any service provider that has a reasonable expectation to be on the property that the dog has been determined to be a dangerous dog. The owner or keeper is responsible for the cost of the signs;

D. Order the dog confined in a secure enclosure. For the purposes of this paragraph, "secure enclosure" means a fence or structure of at least 6 feet in height forming or making an enclosure suitable to prevent the entry of young children and suitable to confine a dangerous dog in conjunction with other measures that may be taken by the owner or keeper. The secure enclosure must be locked, be designed with secure sides and be designed to prevent the animal from escaping from the enclosure. The enclosure may also be designed with a secure top and bottom if determined necessary by the court. The court shall specify the length of the

period of confinement and may order permanent confinement;

E. Order that the owner or keeper of a dog confined to a secure enclosure pursuant to paragraph D may not allow the dog outside of the secure enclosure unless;

(1) It is necessary to obtain veterinary care for the dog or to comply with orders of the court; and

(2) The dog is securely muzzled with a basket-style muzzle, restrained by a leash not more than 3 feet in length with a minimum tensile strength of 300 pounds and under the direct control of the dog owner or keeper;

F. Order the dog to be securely muzzled with a basket-style muzzle, restrained by a leash not more than 3 feet in length with a minimum tensile strength of 300 pounds and under the direct control of the dog owner or keeper whenever the dog is off the owner's or keeper's premises;

G. Order the dog to be spayed or neutered;

H. Order the dog to be microchipped within 60 days of the court order;

I. Order the owner or keeper of the dog to obtain a minimum of \$100,000 in liability insurance for the life of the dog;

J. Order the owner or keeper of the dog to have the dog evaluated by a certified canine behaviorist or certified dog trainer and to attend dog training classes; and

K. Order the owner or keeper of the dog to immediately notify the sheriff, a local law enforcement officer or an animal control officer if the dog escapes.

The court may order restitution in accordance with Title 17-A, chapter 54 for any damages inflicted upon a person or a person's property by a dog determined to be a dangerous dog under this subsection.

3. Nuisance dog finding. If, upon hearing, the court finds that a dog is a nuisance dog, the court shall impose a fine and may impose any of the penalties set forth in subsection 2, paragraphs F to K. A dog may be determined by a court to be a nuisance dog only once. After 2 years from the date of the court order finding that the dog is a nuisance dog, the owner or keeper may petition the court to amend or reduce any of the restrictions placed on the dog. The court may amend or reduce the restrictions placed on the dog if the owner or keeper demonstrates to the satisfaction of the court that the owner or keeper has complied with the court order and the dog no longer poses a risk as a nuisance dog.

4. Identification and confinement of other dogs. In addition to orders imposed pursuant to subsections 2 and 3, the court may order that the owner or keeper of a dangerous dog or a nuisance dog:

A. Provide the animal control officer in the municipality where the dangerous dog or nuisance dog is kept with photographs and descriptions of other dogs kept by that owner or keeper including the sex, breed, age, identifying markings and microchip numbers of each dog; and

B. Confine any other dogs kept on the owner's or keeper's premises as provided in subsection 2, paragraphs D and E.

5. Failure to abide by court order. If the owner or keeper of a dog willfully fails to comply with any provision of a court order imposed pursuant to subsection 2, 3 or 4, the court shall find the owner or keeper in contempt.

If the court order imposed pursuant to subsection 2, paragraph A is not complied with within the time set by the court, the court may, upon application by the complainant under subsection 1 or other person, issue a warrant to the sheriff or any of the sheriff's deputies or to a local law enforcement officer or constable in the municipality where the dog is found, commanding the officer to have the dog humanely euthanized and make a return of the warrant to the court within 14 days from the date of the warrant.

The owner or keeper must be ordered to pay all costs of supplementary proceedings and all reasonable costs for seizure and euthanasia of the dog.

6. Dogs presenting immediate or continuing threat to public. After issuing a summons pursuant to subsection 1 and before hearing, if the dog poses an immediate or continuing threat to the public, a sheriff, local law enforcement officer or animal control officer shall give a written order requiring the owner or keeper of the dog to muzzle with a basket-style muzzle, restrain or confine the dog to the owner's or keeper's premises or to have the dog confined at the owner's or keeper's expense at a place determined by the sheriff, local law enforcement officer or animal control officer. If an owner or keeper of a dog fails to comply with the written order, the sheriff, local law enforcement officer or animal control officer may apply to the District Court, the Superior Court or a justice of the peace for an ex parte order for authorization to take possession of the dog that poses an immediate or continuing threat to the public and turn the dog over to the applicant or other suitable person.

A dog owner or keeper who fails to abide by the written order commits a civil violation for which a fine of not less than \$50 and not more than \$200 may be adjudged for each day of noncompliance.

7. Ex parte. An order may be entered ex parte upon findings by the court or justice of the peace when:

- A. The dog has inflicted serious bodily injury; or
- B. There is a reasonable likelihood that the dog is dangerous or vicious and:
 - (1) Its owner has failed to muzzle, restrain or confine the dog; and
 - (2) That failure poses an immediate threat of harm to the public.

8. Modify order. An order under subsection 7 may be modified by the court.

- A. Upon 2 days' notice or a shorter period the court may prescribe, the owner or keeper whose dog has been possessed pursuant to an ex parte order may appear in the District Court or the Superior Court and move for the dissolution or modification of the ex parte order.
- B. The court shall hear and determine the motion, and the hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.
- C. The owner or keeper shall submit an affidavit setting forth specific facts to substantiate the modification or dissolution of the order. The applicant has the burden of presenting evidence to substantiate the original findings.

9. Lien. Any person taking possession of a dog as provided in this section has a lien on that dog in accordance with Title 17, section 1021, subsection 6.

10. Treble damages. If a dog whose owner or keeper refuses or neglects to comply with an order under this section wounds any person by a sudden assault or wounds or kills any domesticated animal, the owner or keeper shall pay the person injured treble damages and costs to be recovered by a civil action.

11. Class D crime. If the owner or keeper of a dog refuses or neglects to comply with an order issued under subsection 2, 3, 4 or 7, the owner or keeper commits a Class D crime. The court, as part of the judgment, may prohibit a person convicted under this subsection from owning or possessing a dog or having a dog on that person's premises for a period of time. The prohibition may be permanent.

12. Duty of owner or keeper to notify. The owner or keeper of a dog determined by a court of competent jurisdiction to be a dangerous dog or a nuisance dog shall notify the municipality in which the dog resides in writing and within 30 days if ownership of the dog is transferred, the residence of the dog is changed or the dog is deceased.

Sec. 13. 7 MRSA §3954 is enacted to read:

§3954. Prohibitions on dangerous dogs and nuisance dogs

1. Prohibitions. A person may not:

- A. Train or encourage a dog that is not directly involved with a protection dog training program recognized by the Department of Public Safety, Bureau of State Police to be aggressive toward or attack another person or domesticated animal;
- B. Transfer ownership of a dog determined by a court of competent jurisdiction to be a dangerous dog without the permission of the court, unless the transfer is to an animal control officer or an animal shelter that has a contract with a municipality to euthanize the dog for the municipality; or
- C. Tether a dog determined by a court of competent jurisdiction to be a dangerous dog or a nuisance dog.

2. Penalty. A person who violates subsection 1 commits a civil violation for which a fine not to exceed \$100 may be adjudged in addition to court costs.

Sec. 14. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 7, chapter 727, in the chapter headnote, the words "dangerous dogs" are amended to read "dangerous dogs and nuisance dogs" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 15. Implementation of dog licensing database. The Department of Agriculture, Conservation and Forestry shall develop and implement the dog licensing database pursuant to the Maine Revised Statutes, Title 7, section 3925 within one year of the effective date of this Act.

See title page for effective date.

CHAPTER 405
S.P. 733 - L.D. 1903

An Act To Improve the Effectiveness of the Major Business Headquarters Expansion Tax Credit

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

Sec. 1. 36 MRSA §5219-QQ, as corrected by RR 2017, c. 1, §33, is amended to read:

§5219-QQ. Credit for major business headquarters expansions

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

A. "Certified applicant" means a qualified applicant that has received a certificate of approval from the commissioner pursuant to this section.

A-1. "Base level of employment" means either the total employment of a qualified applicant as of the March 31st, June 30th, September 30th and December 31st of the calendar year immediately preceding the application for a certificate of approval under subsection 2 divided by 4 or the qualified applicant's average employment during the base period, whichever is greater.

A-2. "Base period" means the 3 calendar years prior to the year in which a qualified applicant's application for a certificate of approval under subsection 2 is approved by the commissioner.

B. "Commissioner" means the Commissioner of Economic and Community Development.

C. "Employees based in the State" means employees that perform more than 50% of employee-related activities for the employer at the headquarters in the State.

D. "Facility" means one or more buildings and includes the real and personal property located in those buildings.

E. "Full-time" means an average of 36 hours weekly during the period of measurement.

F. "Headquarters" means the principal facility from which the applicant directs its national or global business activities, as determined by the commissioner at the time of application.

G. "Qualified applicant" means an applicant that, at the time an application for a certificate of approval is submitted, satisfies all of the following criteria:

- (1) The applicant's headquarters are or will be located in the State;
- (2) The applicant employs at least 5,000 full-time employees worldwide of which at least 25% are or will be based in ~~this~~ the State;
- (3) The applicant has business locations in at least 3 other states or foreign countries; and
- (4) The applicant intends to make a qualified investment in the State within 5 years following the date of the application.

H. "Qualified investment" means an investment of at least \$35,000,000 to design, permit, construct, modify, equip or expand the applicant's headquarters in the State. The investments and activities of a qualified applicant and other entities that are members of the qualified applicant's unitary business must be aggregated to determine whether a qualified investment has been made. A qualified investment does not include an invest-

ment made prior to the issuance of a certificate of approval or after December 31, 2022.

2. Procedures for application; certificate of approval. The provisions of this subsection govern the procedures for providing for and obtaining a certificate of approval.

A. A qualified applicant may apply to the commissioner for a certificate of approval. An applicant shall submit to the commissioner information demonstrating that the applicant is a qualified applicant. If a certified applicant undertakes to make an additional qualified investment, the certified applicant may apply to the commissioner for an additional certificate of approval.

B. The commissioner, within 30 days of receipt of an application submitted pursuant to paragraph A, shall determine whether the applicant is a qualified applicant and shall issue either a certificate of approval or a written denial indicating why the applicant is not qualified. The certificate issued by the commissioner must describe the qualified investment and specify the total amount of qualified investment approved under the certificate.

C. Upon issuance of a certificate of completion in accordance with paragraph F, the commissioner shall issue, on behalf of the State, a memorandum to the qualified applicant describing the benefits provided by this section at the time the certificate of completion is issued. The memorandum must provide that the certificate of completion does not prohibit the commissioner from revoking a certificate in accordance with paragraph E and does not prohibit the assessor from assessing and collecting an overpaid benefit in accordance with the provisions of this Title.

D. A certified applicant shall obtain approval from the commissioner to transfer the certificate of approval or, if the certified applicant has obtained a certificate of completion, that certificate of completion to another person. A certificate of approval or certificate of completion may be transferred only if all or substantially all of the assets of the certified applicant are, or will be, transferred to that person or if 50% or more of the certified applicant's voting stock is, or will be, acquired by that person. The commissioner shall approve the transfer of the certificate of approval or the certificate of completion only if at least one of the following conditions is satisfied:

- (1) The transferee is a member of the applicant's unitary affiliated group at the time of the transfer; or
- (2) The commissioner finds that the transferee will, and has the capacity to, maintain operations of the headquarters in the State in

a manner that meets the minimum qualifications for continued eligibility of benefits under this section after the transfer occurs.

If the commissioner approves the transfer of the certificate, the transferee, from the date of the transfer, must be treated as the certified applicant and as eligible to claim any remaining benefit under the certificate of approval or the certificate of completion that has not been previously claimed by the transferor as long as the transferee meets the same eligibility requirements and conditions for the credit as applied to the original certified applicant.

E. The commissioner must revoke a certificate of approval if the certified applicant or a person to whom a certificate of approval has been transferred pursuant to paragraph D fails to make a qualified investment within 5 years of the date of the certificate of approval. The commissioner shall revoke a certificate of approval or a certificate of completion if the applicant ceases operations of the headquarters in the State or the certificate of approval or certificate of completion is transferred to another person without approval from the commissioner pursuant to paragraph D. A certified applicant whose certificate of completion is revoked within 5 years after the date issued shall within 60 days following revocation of the certificate return to the State an amount equal to the total credits claimed under this section. A certified applicant whose certificate of completion is revoked during the period from 6 years after through 10 years after the date the certificate was issued shall within 60 days following revocation of the certificate return to the State an amount equal to the total credits claimed under this section for the period from 6 years after through 10 years after the date the certificate was issued. If credit amounts are recaptured after a certificate of approval has been transferred as provided in paragraph D, the transferee is responsible for payment of any credit amounts that must be returned to the State.

F. Upon making the qualified investment and completing the headquarters and employment criteria in subsection 1, paragraph G, a certified applicant shall submit an application to the commissioner for a certificate of completion. If the commissioner determines that a qualified investment has been made, the applicant's headquarters is located in the State and at least 25% of the applicant's full-time employees, as measured at the time of application for the certificate of approval, are based in the State, the commissioner shall issue a certificate of completion to the certified applicant as soon as is practical. The certificate of completion must state the amount of qualified investment made by the certified applicant.

The commissioner may not issue certificates of approval under this subsection that total, in the aggregate, more than \$100,000,000 of qualified investment or any individual certificate of approval for more than \$40,000,000 of qualified investment.

3. Refundable credit allowed. A qualified certified applicant is allowed a credit as provided in this subsection.

A. Subject to the limitations under paragraph B, beginning with the tax year during which the certificate of completion is issued or the tax year beginning in 2020, whichever is later, and for each of the following 19 tax years, a certified applicant is allowed a credit against the tax due under this Part for the taxable year in an amount equal to 2% of the certified applicant's qualified investment amount of actual qualified investment specified on the certified applicant's certificate of completion under subsection 2, paragraph F or the amount of qualified investment approved by the commissioner in the certificate of approval under subsection 2, paragraph B, whichever is less. The credit allowed under this paragraph is refundable.

B. The credit under this subsection is limited as follows:

(1) A credit is not allowed for any tax year during which the taxpayer does not meet or exceed the following employment targets as measured on the last day of the tax year.

(a) For each of the first 10 tax years for which the credit is claimed, there must be a total of at least 80 additional full-time employees based in the State above the certified applicant's base level of employment whose jobs were added since the first day of the first tax year for which the credit was claimed multiplied by the number of years for which the credit has been claimed.

(b) For each tax year after the 10th tax year for which the credit is claimed, the taxpayer must employ a total of at least 800 additional full-time employees based in the State above the certified applicant's base level of employment whose jobs were added since the first day of the first tax year for which the credit was claimed.

Jobs for additional full-time employees that are counted for determining eligibility for the credit under one certificate of completion may not be counted for determining eligibility for the credit under a separate certificate of completion.

(2) Cumulative credits under this subsection may not exceed \$16,000,000 under any one certificate.

4. Reporting required. A certified applicant and the commissioner are required to make reports pursuant to this subsection.

A. On or before March 1st of each year, a certified applicant shall file a report with the commissioner for the tax year ending during the immediately preceding calendar year, referred to in this paragraph as "the report year," containing the following information:

(1) The number of all full-time employees based in this the State of the certified applicant on the last day of the tax year ending during the calendar year immediately preceding the report year; and

(2) The incremental amount of qualified investment made in the report year;

(3) The total number of additional full-time employees added in the State by the certified applicant above the certified applicant's base level of employment since the date a certificate of approval was issued;

(4) The incremental number of additional full-time employees added in the State by the certified applicant above the certified applicant's base level of employment during the report year;

(5) The average and median wages of all additional full-time employees above the certified applicant's base level of employment in the State whose jobs were added since the first day of the first tax year for which the credit was claimed; and

(6) The percentage and number of all additional full-time employees above the certified applicant's base level of employment who have access to retirement benefits and health benefits.

The commissioner may prescribe forms for the annual report described in this paragraph. The commissioner shall provide copies of the report to the State Tax Assessor and to the joint standing committee of the Legislature having jurisdiction over taxation matters at the time the report is received.

B. By April 1st of each year, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters aggregate data on employment levels and qualified investment amounts of certified applicants for each year that the certified applicant claimed a credit under this section, and the State

Tax Assessor shall report to the committee the revenue loss during the previous calendar year, including the loss due to refundable credits, as a result of this section for each taxpayer claiming the credit.

Notwithstanding any other provision of law to the contrary, the reports provided under this subsection are public records as defined in Title 1, section 402, subsection 3.

5. Evaluation; specific public policy objective; performance measures. The credit provided under this section is subject to ongoing legislative review in accordance with Title 3, chapter 37. In developing evaluation parameters to perform the review, the Office of Program Evaluation and Government Accountability, the joint legislative committee established to oversee program evaluation and government accountability matters and the joint standing committee of the Legislature having jurisdiction over taxation matters shall consider:

A. That the specific public policy objective of the credit provided under this section is to create and retain high-quality jobs in the State by encouraging major businesses to locate their headquarters in the State or to expand their headquarters in the State. For purposes of this subsection, "high-quality jobs" means jobs for which health insurance benefits and retirement benefits are available; and

B. Performance measures, including, but not limited to:

(1) The number of additional full-time employees added during a period being reviewed and how employment during that period compares to the minimum employment requirements set forth in subsection 3, paragraph B;

(2) The amount of qualified investment during a period being reviewed, and how expenditures compare to the minimum level of expenditure set forth in subsection 1, paragraph H;

(3) The change in the number of major business headquarters located in the State and the number of expansions of those headquarters during a period being reviewed;

(4) Measures of fiscal impact and overall economic impact to the State; and

(5) The number of new employees for whom health benefits and retirement benefits are available.

See title page for effective date.

CHAPTER 406
S.P. 484 - L.D. 1406

An Act To Promote
Prescription Drug Price
Transparency

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

Sec. 1. 22 MRSA §8712, sub-§5 is enacted to
read:

5. Prescription drug information. By Decem-
ber 1, 2018 and annually thereafter, the organization
shall provide a report containing the following infor-
mation about prescription drugs, both brand name and
generic:

A. The 25 most frequently prescribed drugs in the
State;

B. The 25 costliest drugs as determined by the to-
tal amount spent on those drugs in the State; and

C. The 25 drugs with the highest year-over-year
cost increases as determined by the total amount
spent on those drugs in the State.

Sec. 2. **Further data collection by Maine
Health Data Organization.** The Maine Health
Data Organization shall develop a plan to collect data
from manufacturers related to the cost and pricing of
prescription drugs in order to provide transparency in
and accountability for prescription drug pricing. The
organization shall consult with other state and national
agencies and organizations to determine how to insti-
tute such data collection. The organization shall sub-
mit the plan, its findings and any recommendations for
suggested legislation to the First Regular Session of
the 129th Legislature no later than April 1, 2019. The
joint standing committee of the Legislature having
jurisdiction over judiciary matters may report out leg-
islation related to prescription drug price transparency
and the organization's findings and recommendations to
the First or Second Regular Session of the 129th
Legislature.

Sec. 3. **Appropriations and allocations.**
The following appropriations and allocations are
made.

HEALTH DATA ORGANIZATION, MAINE

Maine Health Data Organization 0848

Initiative: Provides a one-time allocation to the Maine
Health Data Organization to collect and present certain
data to the Legislature and to develop a plan for fur-
ther data collection.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$0	\$25,000

OTHER SPECIAL	\$0	\$25,000
REVENUE FUNDS TOTAL		

See title page for effective date.

CHAPTER 407
S.P. 714 - L.D. 1871

An Act To Implement the
Recommendations of the Task
Force To Address the Opioid
Crisis in the State Regarding
Respectful Language

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

PART A

Sec. A-1. 1 MRSA §125, as enacted by PL
1985, c. 737, Pt. A, §2, is amended to read:

§125. Alcohol Awareness Week

The Governor shall annually issue a proclamation
setting aside the first full week in December of each
year as Alcohol Awareness Week. The proclamation
shall invite and urge citizens, ~~alcoholism~~ appropriate
service agencies, schools and other suitable organiza-
tions and groups to observe this week through appro-
priate activities. ~~The Alcohol and Drug Abuse Plan-
ning Committee shall, through the departments repre-
sented on the committee, make appropriate informa-
tion available to citizens, organizations and groups
within the limits of their budgets.~~

Sec. A-2. 4 MRSA §421, as amended by PL
2001, c. 354, §3 and PL 2003, c. 689, Pt. B, §6, is fur-
ther amended to read:

§421. Establishment

1. **Programs.** The Judicial Department may es-
tablish ~~alcohol and drug~~ substance use disorder treat-
ment programs in the Superior Courts and District
Courts and may adopt administrative orders and court
rules to govern the practice, procedure and administra-
tion of these programs. ~~Alcohol and drug~~ Substance
use disorder treatment programs must include local
judges and must be community based and operated
separately from juvenile drug courts.

2. **Goals.** The goals of the ~~alcohol and drug~~ sub-
stance use disorder treatment programs authorized by
this chapter include the following:

A. To reduce ~~alcohol and drug abuse~~ substance
use and dependency among criminal offenders;

B. To reduce criminal recidivism;

- C. To increase personal, familial and societal accountability of offenders;
- D. To promote healthy and safe family relationships;
- E. To promote effective interaction and use of resources among justice system personnel and community agencies; and
- F. To reduce the overcrowding of prisons.

3. Collaboration. The following shall collaborate with and, to the extent possible, provide financial assistance to the Judicial Department in establishing and maintaining alcohol and drug substance use disorder treatment programs:

- A. District attorneys, the Department of the Attorney General and statewide organizations representing prosecutors;
- B. Defense attorneys, including statewide organizations representing defense attorneys;
- C. The Department of Corrections;
- D. The Department of Health and Human Services;
- E. The Department of Public Safety;
- F. The Department of Education;
- G. The business community;
- H. Local service agencies; and
- I. Statewide organizations representing drug court professionals.

Sec. A-3. 4 MRSA §422, sub-§2, as amended by PL 2011, c. 657, Pt. AA, §2, is further amended to read:

2. Pass-through services. The Administrative Office of the Courts, with the assistance of the Coordinator of Diversion and Rehabilitation Programs, may enter into cooperative agreements or contracts with:

- A. The Department of Health and Human Services or other federal-licensed treatment providers or state-licensed treatment providers to provide substance ~~abuse~~ use disorder services for ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment program participants. To the extent possible, the ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment programs must access existing substance ~~abuse~~ use disorder treatment resources for ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment program participants;
- B. The Department of Corrections, Division of Community Corrections or other appropriate organizations to provide for supervision of ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment program participants;

C. The Department of Corrections or other appropriate organizations to provide for drug testing of ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment program participants;

D. Appropriate organizations to provide for a drug court manager at each ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment program location;

E. Appropriate organizations and agencies for training of ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment program staff and for evaluation of ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment program operations;

F. Appropriate local, county and state governmental entities and other appropriate organizations and agencies to encourage the development of diversion and rehabilitation programs; and

G. Appropriate organizations and agencies for the provision of medical, educational, vocational, social and psychological services, training, counseling, residential care and other rehabilitative services designed to create, improve or coordinate diversion or rehabilitation programs.

Sec. A-4. 4 MRSA §423, as amended by PL 2013, c. 159, §8, is further amended to read:

§423. Reports

The Judicial Department shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters by February 15th annually on the establishment and operation of ~~alcohol and drug substance abuse disorder~~ alcohol and drug substance use disorder treatment programs in the courts. The report must cover at least the following:

- 1. Training.** Judicial training;
- 2. Locations.** Locations in which the ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment programs are operated in each prosecutorial district;
- 3. Participating judges and justices.** Judges and justices participating in the ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment programs at each location;
- 4. Community involvement.** Involvement of the local communities, including the business community and local service agencies;
- 5. Education.** Educational components;
- 6. Existing resources.** Use of existing substance ~~abuse~~ use disorder resources;
- 7. Statistics.** Statistical summaries of each ~~alcohol and drug substance use disorder~~ alcohol and drug substance use disorder treatment program;
- 8. Collaboration.** Demonstration of the collaboration required under section 421, subsection 3, including agreements and contracts, the entities collaborating with the Judicial Department, the value of the

agreements and contracts and the amount of financial assistance provided by each entity; and

9. Evaluation of programs. Evaluation of ~~alcohol and drug~~ substance use disorder treatment programs individually and overall.

Sec. A-5. 5 MRSA §957, sub-§1, as enacted by PL 1989, c. 857, §19, is amended to read:

1. Assessment and referral. The program shall provide assessment and referral services to employees whose work performance has been affected by behavioral or medical disorders including, but not limited to, ~~alcoholism and drug abuse~~ substance use disorder, misuse of ~~other~~ drugs, emotional problems, family disorders and financial, legal, marital and any other stresses. The major elements of the program consist of the following:

- A. An assessment interview;
- B. Referral to appropriate treatment;
- C. Follow-up;
- D. Coordination of a benefit package;
- E. Continuous care;
- F. Maintenance of confidentiality of client records; and
- G. Education of state employees.

Sec. A-6. 5 MRSA §1642, sub-§6, as amended by PL 2011, c. 542, Pt. A, §2, is further amended to read:

6. Social service. "Social service" means any children's, youth, adult or elderly service and ~~alcoholism~~ substance use disorder, community action, developmental disability, ~~drug or substance abuse~~, home-heating assistance, juvenile, mental health, intellectual disability, older Americans, poverty, rehabilitation, transportation, weatherization or other social service that may be defined in the future and that is operated by the departments or the division utilizing state-administered funds, including related health and medical services and income supplementation programs.

Sec. A-7. 5 MRSA §12004-G, sub-§13-C, as enacted by PL 1993, c. 410, Pt. LL, §2, is amended to read:

13-C.

Executive/Drug Prevention and Treatment	Substance Abuse Use Disorder Services Commission	Expenses Only	5 MRSA §20065
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Sec. A-8. 5 MRSA §12004-G, sub-§15-A, as reenacted by PL 1993, c. 631, §1, is amended to read:

15-A.

Substance Abuse Use Disorder	Driver Education and Evaluation Programs Appeals Board	\$75/Day	5 MRSA §20078-A
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Sec. A-9. 5 MRSA §19202, sub-§2-B, ¶A, as amended by PL 2011, c. 657, Pt. AA, §4, is further amended to read:

A. The committee includes 7 members as follows, of whom only the Legislators are voting members:

- (1) Two members of the Legislature, one Senator nominated by the President of the Senate and one Representative nominated by the Speaker of the House of Representatives;
- (2) The director of the HIV, STD and viral hepatitis program within the Department of Health and Human Services, Maine Center for Disease Control and Prevention;
- (3) A representative of the Department of Education, nominated by the Commissioner of Education;
- (4) A representative of the Department of Corrections, nominated by the Commissioner of Corrections;
- (5) A representative of the organizational unit of the Department of Health and Human Services that provides programs and services for substance ~~abuse use disorder~~ prevention and treatment, nominated by the Commissioner of Health and Human Services; and
- (6) A representative of the Department of Health and Human Services, Office of MaineCare Services, nominated by the Commissioner of Health and Human Services.

Sec. A-10. 5 MRSA §20001, as enacted by PL 1989, c. 934, Pt. A, §3, is amended to read:

§20001. Title

This chapter may be known and cited as the "Maine Substance ~~Abuse Use Disorder~~ Prevention and Treatment Act."

Sec. A-11. 5 MRSA §20002, sub-§1, as amended by PL 2007, c. 116, §1, is further amended to read:

1. Integrated and comprehensive approach. To adopt an integrated approach to the problem of ~~alcohol and other drug abuse~~ substance use disorder

and to focus all the varied resources of the State on developing a comprehensive and effective range of ~~alcohol and other drug abuse~~ substance use disorder prevention and treatment activities and services;

Sec. A-12. 5 MRSA §20002, sub-§2, as amended by PL 2011, c. 657, Pt. AA, §5, is further amended to read:

2. Coordination of activities and services. To establish within the Department of Health and Human Services the responsibility for planning, developing, implementing, coordinating and evaluating all of the State's ~~alcohol and other drug abuse~~ substance use disorder prevention and treatment activities and services;

Sec. A-13. 5 MRSA §20003, sub-§1, as amended by PL 1991, c. 601, §3, is repealed.

Sec. A-14. 5 MRSA §20003, sub-§3-A, as enacted by PL 1993, c. 410, Pt. LL, §4, is amended to read:

3-A. Commission. "Commission" means the Substance ~~Abuse Use Disorder~~ Services Commission, as established by section 12004-G, subsection 13-C.

Sec. A-15. 5 MRSA §20003, sub-§4, as amended by PL 2007, c. 116, §2, is further amended to read:

4. Community service provider. "Community service provider" means a provider of ~~alcohol or drug abuse~~ substance use disorder treatment or gambling addiction treatment, including, but not limited to, evaluation.

Sec. A-16. 5 MRSA §20003, sub-§9, as enacted by PL 1989, c. 934, Pt. A, §3, is repealed.

Sec. A-17. 5 MRSA §20003, sub-§10, as enacted by PL 1989, c. 934, Pt. A, §3, is amended to read:

10. Drug user. "Drug ~~abuser user~~" means a person who uses any drugs, dependency-related drugs or hallucinogens in violation of any law of the State.

Sec. A-18. 5 MRSA §20003, sub-§11, as enacted by PL 1989, c. 934, Pt. A, §3, is repealed.

Sec. A-19. 5 MRSA §20003, sub-§12, as enacted by PL 1989, c. 934, Pt. A, §3, is repealed.

Sec. A-20. 5 MRSA §20003, sub-§17-A is enacted to read:

17-A. Person with substance use disorder. "Person with substance use disorder" means a person who, due to the use of alcohol or a drug, has a clinical and significant functional impairment, including a health problem or a disability or an inability to meet major responsibilities at work, home or school. A substance use disorder may be mild, moderate or se-

vere as determined by the diagnostic criteria met by the person.

Sec. A-21. 5 MRSA §20003, sub-§18, as enacted by PL 1989, c. 934, Pt. A, §3, is amended to read:

18. Prevention. "Prevention" means any activity designed to educate or provide information to individuals and groups about the use ~~or abuse~~ of alcohol and other drugs.

Sec. A-22. 5 MRSA §20003, sub-§21, as enacted by PL 1989, c. 934, Pt. A, §3, is repealed.

Sec. A-23. 5 MRSA §20003, sub-§21-A is enacted to read:

21-A. Substance use prevention. "Substance use prevention" means all facilities, programs or services relating to substance use control, education, rehabilitation, research, training and treatment, including reinforcing health behaviors and lifestyles and reducing risks contributing to alcohol, tobacco and other drug misuse. "Substance use prevention" does not include any function defined in subsection 19 as "prevention of drug traffic."

Sec. A-24. 5 MRSA §20003, sub-§22, as enacted by PL 1989, c. 934, Pt. A, §3, is amended to read:

22. Treatment. "Treatment" means the broad range of emergency, outpatient, intermediate and inpatient services and care, including career counseling, diagnostic evaluation, employment, health, medical, psychiatric, psychological, recreational, rehabilitative, social service care, treatment and vocational services, that may be extended to ~~an alcoholic, intoxicated person, a drug abuser user, drug addict, drug dependent a~~ person with substance use disorder or a person in need of assistance due to the use of a dependency-related drug.

Sec. A-25. 5 MRSA §20005, as amended by PL 2011, c. 657, Pt. AA, §§16 to 22, is further amended to read:

§20005. Powers and duties

The department shall:

1. State Government. Establish the overall plans, policies, objectives and priorities for all state ~~alcohol and other drug abuse~~ substance use disorder prevention and treatment functions, except the prevention of drug traffic and the State Employee Assistance Program established pursuant to Title 22, chapter 254-A;

2. Comprehensive plan. Develop and provide for the implementation of a comprehensive state plan for ~~alcohol and drug abuse~~ substance use disorder. Any plan developed by the department must be subject to public hearing prior to implementation;

3. Information. Ensure the collection, analysis and dissemination of information for planning and evaluation of ~~alcohol and drug abuse~~ substance use disorder services;

4. Coordination; organizational unit. Ensure that ~~alcohol and drug abuse~~ substance use disorder assistance and service are delivered in an efficient and coordinated program and, with the oversight of the commission, coordinate all programs and activities authorized by the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Public Law 91-616 (1982), as amended, and by the Drug Abuse Office and Treatment Act of 1972, 21 United States Code, Section 1101 et seq. (1982), as amended; and other state or federal programs or laws related to ~~drug abuse~~ substance use disorder prevention that are not the specific responsibility of another state agency under federal or state law;

5. Budget. Develop and submit to the Legislature by January 15th of the first year of each legislative biennium recommendations for continuing and supplemental allocations, deappropriations or reduced allocations and appropriations from all funding sources for all state ~~alcohol and drug abuse~~ substance use disorder programs. The department shall make final recommendations to the Governor before any ~~substance abuse use disorder~~ funds are appropriated or deappropriated in the Governor's proposed budget. The department shall formulate all budgetary recommendations for the Driver Education and Evaluation Programs with the advice, consultation and full participation of the chief executive officer of the Driver Education and Evaluation Programs.

Notwithstanding any other provision of law, funding appropriated and allocated by the Legislature for the department for ~~substance abuse use disorder~~ prevention and treatment is restricted solely to that use and may not be used for other expenses of the department. By January 15th of each year, the commissioner or the commissioner's designee shall deliver a report of the budget and expenditures of the department for ~~substance abuse use disorder~~ prevention and treatment to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and human resource matters;

6. Contracts and licensing. Through the commissioner:

A. Administer all contracts with community service providers for the delivery of ~~alcohol and drug abuse~~ substance use disorder services;

A-1. Administer all contracts with community service providers for the delivery of gambling addiction counseling services; and

B. Establish operating and treatment standards and inspect and issue certificates of approval for

approved treatment facilities, ~~drug abuse~~ substance use disorder treatment facilities or programs, including residential treatment centers, community-based service providers and facilities that are private nonmedical institutions pursuant to section 20024 and subchapter 5.

The commissioner may delegate contract and licensing duties under this subsection to the Department of Corrections as long as that delegation ensures that contracting for ~~alcohol and other drug abuse~~ substance use disorder services provided in community settings is consolidated within the department, that contracting for ~~alcohol and other drug abuse~~ substance use disorder services delivered within correctional facilities is consolidated within the Department of Corrections and that contracting for ~~alcohol and other drug abuse~~ substance use disorder services delivered within mental health facilities or as a component of programs serving persons with intellectual disabilities or autism is consolidated within the department.

The commissioner may not delegate contract and licensing duties if that delegation results in increased administrative costs.

The commissioner may not issue requests for proposals for existing contract services until the commissioner has adopted rules in accordance with the Maine Administrative Procedure Act to ensure that the reasons for which existing services are placed out for bid and the performance standards and manner in which compliance is evaluated are specified and that any change in provider is accomplished in a manner that fully protects the consumer of services.

The commissioner shall establish a procedure to obtain assistance and advice from consumers of ~~alcohol and other drug abuse~~ substance use disorder services regarding the selection of contractors when requests for proposals are issued;

6-A. Contract award and renewal. Award a new contract through a request-for-proposal procedure. Any contract of \$500,000 per year or more that is renewed must be awarded through a request-for-proposal procedure at least every 8 years, except for the following.

A. A renewal contract with a provider is not subject to the request-for-proposal procedure requirement if the contract granted under this subsection is performance based.

B. Notwithstanding paragraph A, the department shall subject a contract to a request-for-proposal procedure when necessary to comply with paragraph C.

C. A contract under this subsection that is subject to renewal must be awarded through a request-for-proposal procedure if the department determines that:

- (1) The provider has breached the existing contract;
- (2) The provider has failed to correct deficiencies cited by the department;
- (3) The provider is inefficient or ineffective in the delivery of services and is unable to improve its performance within a reasonable time; or
- (4) The provider can not or will not respond to a reconfiguration of service delivery requested by the department;

6-B. Consumer assistance and advice. Establish a procedure to obtain assistance and advice from consumers of substance ~~abuse~~ use disorder services regarding the selection of contractors when requests-for-proposals are issued.

7. Uniform requirements. Develop, use and require the use of uniform contracting, information gathering and reporting formats by any state-funded ~~alcohol and other drug abuse~~ substance use disorder programs. Contracting standards must include measurable performance-based criteria on which funding allocations are, in part, based;

8. Reports. By January 15th of each year, report to the Legislature on the accomplishments of the past year's programs, the progress toward obtaining goals and objectives of the comprehensive state plan and other necessary or desirable information;

9. Funds. Have the authority to seek and receive funds from the Federal Government and private sources to further the purposes of this Act;

10. Agreements. Enter into agreements necessary or incidental to the purposes of this Act;

11. Cooperation. Provide support and guidance to individuals, local governments, public organizations and private organizations in their ~~alcohol and drug abuse~~ substance use disorder prevention activities;

12. Rules. Adopt rules, in accordance with the Maine Administrative Procedure Act, necessary to carry out the purposes of this chapter and approve any rules adopted by state agencies for the purpose of implementing ~~alcohol or drug abuse~~ substance use disorder prevention or treatment programs.

All state agencies must comply with rules adopted by the department regarding uniform alcohol and other drug ~~abuse~~ use contracting requirements, formats, schedules, data collection and reporting requirements;

12-A. Training programs. Provide or assist in the provision of training programs for all persons in the field of treating ~~alcoholics and drug abusers~~ persons with substance use disorder, persons engaged in the prevention of ~~alcohol and other drug abuse~~ substance use disorder or any other organization or indi-

vidual in need of or requesting training or other educational information related to ~~alcohol or other drug abuse~~ substance use disorder;

12-B. Motor vehicle operator programs. Administer and oversee the operation of the State's programs related to the ~~abuse~~ use of alcohol by motor vehicle operators;

13. General authority. Perform other acts or exercise any other powers necessary or convenient to carry out the purposes of this chapter;

14. Interdepartmental cooperation. Document to the Legislature's satisfaction active participation and cooperation between the department and the other departments with which it works through the commission;

15. Public input. Document an active, aggressive effort to obtain client and public input on its decision-making process through public hearings and other activities conducted by the commission;

16. Substance use disorder services plan. Plan for ~~not only~~ those services funded directly by the department, ~~but also~~ and those additional services determined by the commission to be critical and related;

17. Program services assessment and implementation. Analyze the existing services system, including the prevention services offered within the State's public school systems, identify gaps, strengths and weaknesses in the current services, identify priorities for expanding or revising the existing services and develop a specific plan to accomplish the most critical changes that are needed;

18. Comprehensive training strategy. Establish a comprehensive training strategy designed to develop the capacity of front-line staff in direct human services positions, including appropriate state agency staff, to recognize, assess and refer chemically dependent clients for appropriate treatment;

19. Fiscal and program accountability. Enhance its current efforts to ensure fiscal and program accountability for the services it purchases and provides;

20. Review policies. Review the full range of public policies and strategies existing in State Government to identify changes that would strengthen its response, identify policies that might discourage excessive consumption of alcohol and other drugs and generate new funding for alcohol and other drug services; and

21. List of banned performance-enhancing substances. Develop and maintain a list of banned performance-enhancing substances in accordance with Title 20-A, section 6621.

Sec. A-26. 5 MRSA §20005-A, first ¶, as amended by PL 2007, c. 116, §5, is further amended to read:

In addition to other applicable requirements and unless precluded by other restrictions on the use of funds, the commissioner shall manage all funds available for the provision of ~~alcohol or other drug abuse~~ substance use disorder services, as well as all funds available for the provision of gambling addiction counseling services, in accordance with the provisions of this section.

Sec. A-27. 5 MRSA §20005-A, sub-§2, as amended by PL 1995, c. 560, Pt. L, §6 and affected by §16, is further amended to read:

2. Performance-based contract. The commissioner shall ensure that all agreements to purchase ~~alcohol or other drug abuse~~ substance use disorder services entered into on or after July 1, 1995 are performance-based contracts.

Sec. A-28. 5 MRSA §20006-A, sub-§1, as enacted by PL 1995, c. 560, Pt. L, §8 and affected by §16, is amended to read:

1. Alternatives. Propose alternatives to current ~~alcohol and drug abuse~~ substance use disorder prevention and treatment programs and services;

Sec. A-29. 5 MRSA §20006-A, sub-§2, as amended by PL 2011, c. 657, Pt. AA, §23, is further amended to read:

2. Investigate. Conduct investigations and studies of any ~~alcohol or drug abuse~~ substance use disorder program or community service provider operating under the control of the department or providing treatment under this chapter through a contract with the department under section 20008 that are licensed pursuant to section 20024 or any facility funded in whole or in part by municipal, state or local funds, as necessary; and

Sec. A-30. 5 MRSA §20007, as amended by PL 2011, c. 657, Pt. AA, §25, is further amended to read:

§20007. Agency cooperation

State agencies shall cooperate fully with the department in carrying out this chapter. A state agency may not develop, establish, conduct or administer any ~~alcohol or drug abuse~~ substance use disorder prevention or treatment program without the approval of the department. The department may request personnel, facilities and data from other agencies as the commissioner finds necessary to fulfill the purposes of this Act.

Sec. A-31. 5 MRSA §20008, as amended by PL 2011, c. 657, Pt. AA, §§26 to 28, is further amended to read:

§20008. Comprehensive program on substance use disorder

The department shall establish and provide for the implementation of a comprehensive and coordinated program of ~~alcohol and drug abuse~~ substance use disorder prevention and treatment in accordance with subchapters 2 and 3 and the purposes of this Act. The program must include the following elements.

1. Public and private resources. All appropriate public and private resources must be coordinated with and utilized in the program.

2. Program. The program must include emergency treatment provided by a facility affiliated with a general hospital or with part of the medical service of a general hospital.

3. Treatment. The department shall provide for adequate and appropriate treatment for ~~alcoholics, drug abusers, users, drug addicts~~ persons with substance use disorder and ~~drug dependent~~ persons admitted under sections 20043 ~~to~~ and 20044. Treatment may not be provided at a correctional institution, except for inmates.

4. Contract with facilities. The department shall contract with approved treatment facilities whenever possible. The administrator of any treatment facility may receive for observation, diagnosis, care and treatment in the facility any person whose admission is applied for under any of the procedures in this subchapter.

Sec. A-32. 5 MRSA §20009, as amended by PL 2011, c. 657, Pt. AA, §29, is further amended to read:

§20009. Planning

The department shall plan ~~alcohol and drug abuse~~ substance use disorder prevention and treatment activities in the State and prepare and submit to the Legislature the following documents:

1. Biennial plan. By January 15, 1991, and biennially thereafter, ~~with the advice and consultation of the Maine Council on Alcohol and Drug Abuse Prevention and Treatment~~, a comprehensive plan containing statements of measurable goals to be accomplished during the coming biennium and establishing performance indicators by which progress toward accomplishing those goals will be measured; and

2. Four-year assessment. By January 15, 1991, and every 4th year thereafter, an assessment of the costs related to drug ~~abuse~~ misuse in the State and the needs for various types of services within the State, including geographical disparities in the needs for various types of services and the needs of special populations of drug ~~abusers~~ users.

Sec. A-33. 5 MRSA §20021, as amended by PL 2011, c. 657, Pt. AA, §30, is further amended to read:

§20021. Public awareness

The department shall create and maintain a program to increase public awareness of the impacts and prevalence of ~~alcohol and drug abuse~~ substance use disorder. The public awareness program must include promotional and technical assistance to local governments, schools and public and private nonprofit organizations interested in ~~alcohol and drug abuse~~ substance use disorder prevention.

Sec. A-34. 5 MRSA §20022, as amended by PL 2011, c. 657, Pt. AA, §31, is further amended to read:

§20022. Information dissemination

As part of its comprehensive prevention and treatment program, the department shall operate an information clearinghouse and oversee, support and coordinate a resource center within the Department of Education. The information clearinghouse and resource center constitute a comprehensive reference center of information related to the nature, prevention and treatment of ~~alcohol and other drug abuse~~ substance use disorder. In fulfillment of the requirement of this section, the resource center may be located within the Department of Education and may operate there pursuant to a memorandum of agreement between the departments. Information must be available for use by the general public, political subdivisions, public and private nonprofit agencies and the State.

Functions of the information clearinghouse and resource center may include, but are not limited to:

1. Research. Conducting research on the causes and nature of drugs, ~~drug abuse~~ substance use or people who are dependent on drugs, ~~especially alcoholics and intoxicated persons or alcohol~~;

2. Information collection. Collecting, maintaining and disseminating knowledge, data and statistics related to drugs, ~~drug abuse~~ substance use and ~~drug abuse~~ substance use disorder prevention;

3. Educational materials. Preparing, publishing and disseminating educational materials; and

4. Treatment facilities. Maintaining an inventory of the types and quantity of ~~drug abuse~~ substance use prevention facilities, programs and services available or provided under public or private auspices to ~~drug addicts, persons with substance use disorder and drug abusers and drug dependent persons, especially alcoholics and intoxicated persons users~~. This function includes the unduplicated count, locations and characteristics of persons receiving treatment, as well as the frequency of admission and readmission and the

frequency and duration of treatment of those persons. The inventory must include the amount, type and source of resources for ~~drug abuse~~ substance use disorder prevention.

Sec. A-35. 5 MRSA §20023, first ¶, as amended by PL 2011, c. 657, Pt. AA, §32, is further amended to read:

To the fullest extent possible, the Commissioner of Education shall coordinate all elementary and secondary school ~~alcohol and drug abuse~~ substance use disorder education programs administered by the Department of Education and funded under the federal Drug-Free Schools and Communities Act of 1986 with programs administered by the Department of Health and Human Services. The Commissioner of Education shall participate in planning, budgeting and evaluation of ~~alcohol and other drug abuse~~ substance use disorder programs, ~~in cooperation with the Substance Abuse Advisory Group~~, and ensure that ~~alcohol and drug abuse~~ substance use disorder education programs administered by the Department of Education that involve any community participation are coordinated with available treatment services.

Sec. A-36. 5 MRSA §20041, as amended by PL 2011, c. 657, Pt. AA, §34, is further amended to read:

§20041. Evaluation

1. Data collection; sources. The department shall collect data and use information from other sources to evaluate or provide for the evaluation of the impact, quality and value of ~~alcohol and drug abuse~~ substance use disorder prevention activities, treatment facilities and other ~~alcohol and other drug abuse~~ substance use disorder programs.

2. Content of evaluation. Any evaluation of treatment facilities must include, but is not limited to, administrative adequacy and capacity, policies and treatment planning and delivery. ~~Alcohol and drug abuse~~ Substance use disorder prevention and treatment services authorized by this Act and by the following federal laws and amendments that relate to ~~drug abuse~~ substance use disorder prevention must be evaluated:

A. The Drug Abuse Office and Treatment Act of 1972, 21 United States Code, Section 1101 et seq. (1982);

B. The Community Mental Health Centers Act, 42 United States Code, Section 2688 et seq. (1982);

C. The Public Health Service Act, 42 United States Code, Section 1 et seq. (1982);

D. The Vocational Rehabilitation Act, 29 United States Code, Section 701 et seq. (1982);

E. The Social Security Act, 42 United States Code, Section 301 et seq. (1982); and

F. The federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Public Law 91-616 (1982) and similar Acts.

Sec. A-37. 5 MRSA §20043, as amended by PL 2011, c. 657, Pt. AA, §§36 to 38, is further amended to read:

§20043. Acceptance for treatment of drug users and persons with substance use disorder

The department shall adopt rules for acceptance of persons into a treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of ~~alcoholics, drug abusers, drug addicts and drug dependent persons~~ users and persons with substance use disorder.

In establishing rules, the department must be guided by the following standards.

1. Voluntary basis. People must be treated on a voluntary basis.

2. Initial assignment. A person must be initially assigned or transferred to outpatient or intermediate treatment, unless the person is found to require residential treatment.

3. Denial of treatment. A person may not be denied treatment solely because that person has withdrawn from treatment against medical advice on a prior occasion or has relapsed after earlier treatment.

4. Individualized treatment plan. An individualized treatment plan must be prepared and maintained on a current basis for each patient.

5. Coordinated treatment. Provision must be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment has available and may utilize other appropriate treatment.

6. Denial of treatment services. A person, firm or corporation licensed by the department as an approved ~~alcohol or drug~~ substance use disorder treatment facility under ~~Title 5~~, section 20005 to provide shelter or detoxification services, and that receives any funds administered by the department to provide ~~substance abuse use disorder~~ substance use disorder prevention and treatment services, may not deny treatment to any person because of that person's inability or failure to pay any assessed fees.

7. Community-based. Treatment must be provided in the least restrictive setting possible and in the person's home community wherever possible.

8. Diagnosing. Diagnosing of a person's mental capabilities, psychological or personality composition, or other nonalcohol-related or drug-related conditions or mental states may not be conducted until detoxification is complete and the person is judged to be medi-

cally no longer under the influence of a chemical or ~~substance of abuse~~ drug.

Sec. A-38. 5 MRSA §20044, as amended by PL 2011, c. 657, Pt. AA, §39, is further amended to read:

§20044. Voluntary treatment of drug users and persons with substance use disorder

1. Voluntary treatment. ~~An alcoholic, drug abuser, drug addict or drug dependent person~~ A drug user or person with substance use disorder may apply for voluntary treatment directly to an approved treatment facility.

2. Determination. A person who comes voluntarily or is brought to an approved treatment facility for residential care and treatment must be examined immediately by a licensed physician. That person may then be admitted or referred to another health facility based upon the physician's recommendation. Subject to rules adopted by the department, the administrator in charge of an approved treatment facility may determine who may be admitted for treatment. If a person is refused admission to an approved treatment facility, the administrator, subject to rules adopted by the department, shall refer the person to another approved treatment facility for treatment if possible and appropriate.

3. Outpatient or intermediate treatment. If a person receiving residential care leaves an approved treatment facility, that person must be encouraged to consent to appropriate outpatient or intermediate treatment.

4. Discharge. If a person leaves an approved treatment facility, against the advice of the administrator in charge of the facility and that person does not have a home, the patient must be assisted in obtaining shelter.

Sec. A-39. 5 MRSA §20047, sub-§2, as amended by PL 2011, c. 657, Pt. AA, §40, is further amended to read:

2. Information for research. Notwithstanding subsection 1, the commissioner may make available information from patients' records for purposes of research into the causes and treatment of ~~alcoholism and drug abuse~~ substance use disorder. Information under this subsection may not be published in a way that discloses patients' names or other identifying information.

Sec. A-40. 5 MRSA §20051, sub-§1, as amended by PL 2009, c. 299, Pt. A, §1, is further amended to read:

1. Laws. A county, municipality or other political subdivision may not adopt or enforce a local law, ordinance, regulation or rule having the force of law that includes drinking, ~~being a person with alcoholism~~

or being found in an intoxicated condition as one of the elements of an offense giving rise to a criminal or civil penalty or sanction.

Sec. A-41. 5 MRSA §20065, sub-§1, as amended by PL 1999, c. 401, Pt. FFF, §1, is further amended to read:

1. Members; appointment. The Substance ~~Abuse~~ Use Disorder Services Commission, as established by section 12004-G, subsection 13-C, consists of 21 members.

Sec. A-42. 5 MRSA §20065, sub-§2, as enacted by PL 1993, c. 410, Pt. LL, §12, is amended to read:

2. Qualifications. To be qualified to serve, members must have education, training, experience, knowledge, expertise and interest in ~~drug-abuse sub-~~ stance use disorder prevention and training. Members must reflect experiential diversity and concern for ~~drug-abuse substance use disorder~~ prevention and treatment in the State. Members must have an unselfish and dedicated personal interest demonstrated by active participation in ~~drug-abuse substance use disorder~~ programs such as prevention, treatment, rehabilitation, training or research in ~~drug-abuse and alcohol abuse substance use disorder~~.

Sec. A-43. 5 MRSA §20065, sub-§3, as amended by PL 2001, c. 303, §1, is further amended to read:

3. Members; representation. The commission consists of the following members:

A. One member of the Senate, appointed by the President of the Senate, and 5 members of the Legislature who may be members of either the Senate or the House of Representatives, appointed by the President of the Senate if Senators or the Speaker of the House if members of the House of Representatives and 2 of these 5 at-large members of the Legislature must be members of the joint standing committee of the Legislature having jurisdiction over health and human services matters;

B. One physician experienced in the treatment of substance ~~abuse~~ use disorder, appointed by the Governor;

C. One public school superintendent who has experience with school-based substance ~~abuse~~ use disorder prevention and education programs, appointed by the Governor;

D. One elementary school educator, appointed by the Governor;

E. One representative from nominations by a statewide alliance for addiction recovery appointed by the Governor;

F. One attorney who represents clients involved with the substance ~~abuse~~ use disorder system, appointed by the Governor;

G. One educator involved in postsecondary substance ~~abuse~~ use disorder education, appointed by the Governor;

H. One substance ~~abuse~~ use disorder prevention practitioner, one substance ~~abuse~~ use disorder education practitioner and one substance ~~abuse~~ use disorder treatment practitioner, appointed by the Governor;

I. One private sector employer familiar with substance ~~abuse~~ use disorder employee assistance programs, appointed by the Governor; and

J. Five members of the public, appointed by the Governor. In appointing these 5 members, the Governor shall select members from outstanding people in the following areas:

- (1) ~~Drug-abuse~~ Substance use disorder prevention;
- (2) ~~Drug-abuse~~ Substance use disorder treatment;
- (3) Education;
- (4) Employers; and
- (5) Persons ~~affected by or recovering from alcoholism, chronic intoxication, drug abuse or drug dependency, evidenced by in recovery from substance use disorder for a minimum of 3 years of sobriety or abstinence from drug abuse.~~

Sec. A-44. 5 MRSA §20067, as amended by PL 2011, c. 657, Pt. AA, §§44 to 46, is further amended to read:

§20067. Duties of the commission

The commission, in cooperation with the department, has the following duties.

1-A. Advise the department. The commission shall advise the department in the development and implementation of significant policy matters relating to substance ~~abuse~~ use disorder.

2. Advise, consult and assist. The commission shall advise, consult and assist the Governor, the executive and legislative branches of State Government and the Chief Justice of the Supreme Judicial Court with activities of State Government related to ~~drug abuse substance use disorder~~ prevention, ~~including alcoholism and intoxication.~~

3. Serve as advocate; review and evaluate; inform the public. The commission shall serve as an advocate on ~~alcoholism and drug abuse~~ substance use disorder prevention, promoting and assisting activities designed to meet the problems of ~~drug-abuse and drug~~

~~dependence~~ substance use disorder at the national and state levels. With the support of the department, the commission shall review and evaluate on a continuing basis state and federal policies and programs relating to ~~drug abuse~~ substance use disorder and other activities conducted or assisted by state departments or agencies that affect persons ~~who abuse or are dependent on~~ with substance use disorder or who use drugs. In cooperation with the department, the commission shall keep the public informed by collecting and disseminating information, by conducting or commissioning studies and publishing the results of those studies, by issuing publications and reports and by providing public forums, including conferences and workshops.

4. Report to the Legislature. The commission shall report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs on or before the last business day of each year. The report must include developments and needs related to ~~drug abuse~~ substance use disorder prevention, including alcoholism and intoxication, and significant policy matters relating to substance ~~abuse~~ use disorder.

Sec. A-45. 5 MRSA §20074, as amended by PL 2011, c. 657, Pt. AA, §49, is further amended to read:

§20074. Separation of evaluation and treatment functions

A Driver Education and Evaluation Programs private practitioner or a counselor employed by a substance ~~abuse~~ use disorder treatment facility approved or licensed by the department providing services under this subchapter may not provide both treatment services and evaluation services for the same individual participating in programs under this subchapter unless a waiver is granted on a case-by-case basis by the Driver Education and Evaluation Programs. The practitioner or counselor providing evaluation services shall give a client the name of 3 practitioners or counselors who can provide treatment services, at least one of whom ~~may~~ is not be employed by the same agency as the practitioner or counselor conducting the evaluation.

Sec. A-46. 5 MRSA §20078-A, sub-§1, as enacted by PL 1993, c. 631, §7, is amended to read:

1. Qualifications. Each member of the board must have training, education, experience and demonstrated ability in successfully treating clients who have substance ~~abuse problems~~ use disorder. Board members may not hold a current certificate to provide driver education, evaluation and treatment services during their terms of appointment.

Sec. A-47. 8 MRSA §1001, sub-§§11 and 12, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, are amended to read:

11. Drug user. "Drug ~~abuser~~ user" has the same meaning as set forth in Title 5, section 20003, subsection 10.

12. Person with substance use disorder. "~~Drug addict~~ Person with substance use disorder" has the same meaning as set forth in Title 5, section 20003, subsection ~~4~~ 17-A.

Sec. A-48. 8 MRSA §1001, sub-§13, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, is repealed.

Sec. A-49. 8 MRSA §1016, sub-§2, ¶E, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, is amended to read:

E. Is not a fugitive from justice, a drug ~~abuser~~ user, a ~~drug addict~~, a ~~drug dependent~~ person with substance use disorder, an illegal alien or a person who was dishonorably discharged from the Armed Forces of the United States;

Sec. A-50. 10 MRSA §8003-B, sub-§2-A, as amended by PL 2009, c. 465, §2, is further amended to read:

2-A. Certain client records confidential. Notwithstanding subsections 1 and 2, a treatment record provided to a licensing board or commission or in connection with a regulatory function within or affiliated with the department during investigation of a person licensed by the department in a medical, mental health, substance ~~abuse~~ use disorder, psychological or health field that contains information personally identifying a licensee's client or patient is confidential during the pendency of the investigation and remains confidential upon the conclusion of the investigation. A treatment record may be disclosed only if:

A. The client or patient executes a written release that states that:

- (1) Unless the release provides for more limited disclosure, execution of the release may result in the record becoming a public record; or
- (2) If the client or patient wishes, execution of the release allows disclosure to only the person or persons clearly identified in the release. The release must require the person or persons identified in the release not to make a disclosure to another person;

B. The disclosure is necessary under Title 22, chapter 857 concerning personnel and licensure actions;

C. The disclosure is necessary under Title 22, section 3474 concerning reports of suspected adult abuse or exploitation;

D. The disclosure is necessary under Title 22, section 4011-A concerning reports of suspected child abuse or neglect; or

E. The disclosure is necessary under Title 22, section 7703 concerning reports of suspected child or adult abuse or neglect.

A release executed by a client or patient does not operate to disclose a record otherwise made confidential by law.

This subsection does not prevent disclosure of records pursuant to an order of a court of competent jurisdiction upon good cause shown.

Sec. A-51. 15 MRSA §1026, sub-§3, ¶A, as amended by PL 2015, c. 436, §4, is further amended to read:

A. If, after consideration of the factors listed in subsection 4, the judicial officer determines that the release described in subsection 2-A will not reasonably ensure the appearance of the defendant at the time and place required, will not reasonably ensure that the defendant will refrain from any new criminal conduct, will not reasonably ensure the integrity of the judicial process or will not reasonably ensure the safety of others in the community, the judicial officer shall order the pretrial release of the defendant subject to the least restrictive further condition or combination of conditions that the judicial officer determines will reasonably ensure the appearance of the defendant at the time and place required, will reasonably ensure that the defendant will refrain from any new criminal conduct, will reasonably ensure the integrity of the judicial process and will reasonably ensure the safety of others in the community. These conditions may include that the defendant:

(1) Remain in the custody of a designated person or organization agreeing to supervise the defendant, including a public official, public agency or publicly funded organization, if the designated person or organization is able to reasonably ensure the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community. When it is feasible to do so, the judicial officer shall impose the responsibility upon the defendant to produce the designated person or organization. The judicial officer may interview the designated person or organization to ensure satisfaction of both the willingness and ability required. The designated person or organization shall agree to

notify immediately the judicial officer of any violation of release by the defendant;

(2) Maintain employment or, if unemployed, actively seek employment;

(3) Maintain or commence an educational program;

(4) Abide by specified restrictions on personal associations, place of abode or travel;

(5) Avoid all contact with a victim of the alleged crime, a potential witness regarding the alleged crime or with any other family or household members of the victim or the defendant or to contact those individuals only at certain times or under certain conditions;

(6) Report on a regular basis to a designated law enforcement agency or other governmental agency;

(7) Comply with a specified curfew;

(8) Refrain from possessing a firearm or other dangerous weapon;

(9) Refrain from the possession, use or excessive use of alcohol and from any use of illegal drugs. A condition under this subparagraph may be imposed only upon the presentation to the judicial officer of specific facts demonstrating the need for such condition;

(9-A) Submit to:

(a) A random search for possession or use prohibited by a condition imposed under subparagraph (8) or (9); or

(b) A search upon articulable suspicion for possession or use prohibited by a condition imposed under subparagraph (8) or (9);

(10) Undergo, as an outpatient, available medical or psychiatric treatment, or enter and remain, as a voluntary patient, in a specified institution when required for that purpose;

(10-A) Enter and remain in a long-term residential facility for the treatment of substance ~~abuse~~ use disorder;

(11) Execute an agreement to forfeit, in the event of noncompliance, such designated property, including money, as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community and post with an appropriate court such evidence of

ownership of the property or such percentage of the money as the judicial officer specifies;

(12) Execute a bail bond with sureties in such amount as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community;

(13) Return to custody for specified hours following release for employment, schooling or other limited purposes;

(14) Report on a regular basis to the defendant's attorney;

(15) Notify the court of any changes of address or employment;

(16) Provide to the court the name, address and telephone number of a designated person or organization that will know the defendant's whereabouts at all times;

(17) Inform any law enforcement officer of the defendant's condition of release if the defendant is subsequently arrested or summoned for new criminal conduct;

(18) Satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community; and

(19) Participate in an electronic monitoring program, if available.

Sec. A-52. 15 MRSA §1026, sub-§4, ¶C, as amended by PL 2011, c. 680, §2, is further amended to read:

C. The history and characteristics of the defendant, including, but not limited to:

(1) The defendant's character and physical and mental condition;

(2) The defendant's family ties in the State;

(3) The defendant's employment history in the State;

(4) The defendant's financial resources;

(5) The defendant's length of residence in the community and the defendant's community ties;

(6) The defendant's past conduct, including any history ~~relating to drug or alcohol abuse~~ of substance use disorder;

(7) The defendant's criminal history, if any;

(8) The defendant's record concerning appearances at court proceedings;

(9) Whether, at the time of the current offense or arrest, the defendant was on probation, parole or other release pending trial, sentencing, appeal or completion of a sentence for an offense in this jurisdiction or another;

(9-A) Any evidence that the defendant poses a danger to the safety of others in the community, including the results of a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by the Department of Public Safety;

(10) Any evidence that the defendant has obstructed or attempted to obstruct justice by threatening, injuring or intimidating a victim or a prospective witness, juror, attorney for the State, judge, justice or other officer of the court; and

(11) Whether the defendant has previously violated conditions of release, probation or other court orders, including, but not limited to, violating protection from abuse orders pursuant to Title 19, section 769 or Title 19-A, section 4011.

Sec. A-53. 15 MRSA §1105, as amended by PL 2003, c. 205, §2, is further amended to read:

§1105. Substance use disorder treatment program

As a condition of post-conviction release, the court may impose the condition of participation in ~~an alcohol and drug~~ a substance use disorder treatment program for a period not to exceed 24 months pursuant to Title 4, chapter 8. Upon request of the Department of Corrections, the court may require the defendant to pay a substance ~~abuse~~ use testing fee as a requirement of participation in the ~~alcohol or drug~~ substance use disorder treatment program. If at any time the court finds probable cause that a defendant released with a condition of participation in ~~an alcohol and drug~~ a substance use disorder treatment program has intentionally or knowingly violated any requirement of the defendant's participation in the ~~alcohol or drug~~ substance use disorder treatment program, the court may suspend the order of bail for a period of up to 7 days for any such violation. The defendant must be given an opportunity to personally address the court prior to the suspension of an order of bail under this section. A period of suspension of bail is a period of detention under Title 17-A, section 1253, subsection 2. This section does not restrict the ability of the court to take actions other than suspension of the order of bail for

the violation of a condition of participation in ~~an alcohol and drug~~ a substance use disorder treatment program or the ability of the court to entertain a motion to revoke bail under section 1098 and enter any dispositional order allowed under section 1099-A. If the court orders participation in a ~~drug and alcohol~~ substance use disorder treatment program under this section, upon sentencing the court shall consider whether there has been compliance with the program.

Sec. A-54. 15 MRSA §3314, sub-§4, as amended by PL 2003, c. 180, §9 and c. 689, Pt. B, §6, is further amended to read:

4. Medical support. Whenever the court commits a juvenile to a Department of Corrections juvenile correctional facility or to the Department of Health and Human Services or for a period of detention or places a juvenile on a period of probation, it shall require the parent or legal guardian to provide medical insurance for or contract to pay the full cost of any medical treatment, mental health treatment, ~~substance abuse use disorder~~ substance use disorder treatment and counseling that may be provided to the juvenile while the juvenile is committed, including while on aftercare status or on probation, unless it determines that such a requirement would create an excessive hardship on the parent or legal guardian, or other dependent of the parent or legal guardian, in which case it shall require the parent or legal guardian to pay a reasonable amount toward the cost, the amount to be determined by the court.

An order under this subsection is enforceable under Title 19-A, section 2603.

Sec. A-55. 17-A MRSA §1204, sub-§2-A, ¶1, as amended by PL 1989, c. 693, §2, is further amended to read:

I. To refrain from drug ~~abuse use~~ substance use and use or excessive use of alcohol;

Sec. A-56. 18-A MRSA §9-401, sub-§(d), ¶(6), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(6). Has in the family background factors such as severe mental illness, ~~substance abuse use disorder~~ substance use disorder, prostitution, genetic or medical conditions or illnesses that place the child at risk for future problems.

Sec. A-57. 20-A MRSA §1001, sub-§9, as amended by PL 2011, c. 614, §4, is further amended to read:

9. Students expelled or suspended. Following a proper investigation of a student's behavior and due process proceedings pursuant to subsection 8-A, if found necessary for the peace and usefulness of the school, a school board shall expel any student:

A. Who is deliberately disobedient or deliberately disorderly;

B. For infractions of violence;

C. Who possesses on school property a firearm as defined in Title 17-A, section 2, subsection 12-A or a dangerous weapon as defined in Title 17-A, section 2, subsection 9 without permission of a school official;

D. Who, with use of any other dangerous weapon as defined in Title 17-A, section 2, subsection 9, paragraph A, intentionally or knowingly causes injury or accompanies use of a weapon with a threat to cause injury; or

E. Who possesses, furnishes or trafficks in any scheduled drug as defined in Title 17-A, chapter 45.

A student may be readmitted on satisfactory evidence that the behavior that was the cause of the student being expelled will not likely recur. The school board may authorize the principal to suspend students up to a maximum of 10 days for infractions of school rules. In addition to other powers and duties under this subsection, the school board may develop a policy requiring a student who is in violation of school ~~substance abuse use~~ substance use disorder or possession rules to participate in ~~substance abuse use disorder~~ substance use disorder services as provided in section 6606. Nothing in this subsection or subsection 9-C prevents a school board from providing educational services in an alternative setting to a student who has been expelled.

Sec. A-58. 20-A MRSA §6001-B, sub-§2, ¶B, as enacted by PL 2003, c. 472, §1, is amended to read:

B. Records concerning information on a person's ~~alcohol and other drug abuse~~ substance use disorder treatment as those records are described in Title 5, section 20047;

Sec. A-59. 20-A MRSA §6604, as enacted by PL 1987, c. 395, Pt. A, §70, is amended to read:

§6604. Substance use disorder programs

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

A. "Chemical health coordinator" means a person who serves as the coordinator of a local school administrative unit's chemical primary and secondary prevention and education program.

2. Local programs. School units may institute special programs to address health and related problems.

To further these objectives, school units may employ specialized personnel such as chemical health coordinators and others knowledgeable ~~in the field of~~ about substance abuse use and may cooperate with public and private agencies in ~~substance abuse use~~ substance use

disorder education, prevention, early intervention, rehabilitation referral and related programs.

Sec. A-60. 20-A MRSA §6605, as amended by PL 1989, c. 700, Pt. A, §51, is further amended to read:

§6605. Department role

1. Personnel. The commissioner shall appoint, subject to the Civil Service Law, supervisors and consultants knowledgeable ~~in the area of~~ about substance abuse use.

2. Technical assistance. The department, through its supervisors and consultants, shall offer technical assistance to public and approved private schools and cooperating community-based organizations to aid in the establishment and implementation of school-based substance abuse use disorder programs and health education curricula.

3. Cooperation; coordination. The department shall carry out its planning activities related to alcohol and drug education and prevention ~~subject to coordination with the Alcohol and Drug Abuse Planning Committee.~~

4. Information collection and sharing. The Department of Education ~~shall be~~ is authorized to gather information about substance abuse use disorder prevention and intervention programs initiated by state or federal agencies whose efforts are directed toward private and public schools of the State, for the purpose of sharing that information with school administrative units.

Sec. A-61. 20-A MRSA §6606, as enacted by PL 1989, c. 708, §3, is amended to read:

§6606. Participation in substance use disorder services

In compliance with written school policy adopted by a school board, the school board may require that a student who has been determined to be in violation of school rules governing substance abuse use or alcohol or drug possession participate in a substance abuse use assessment, education or support group service offered by the school. The school board shall provide for notice to the parents or legal guardian of a student required to participate in such services. If the school board elects to do so, it may request a parent or legal guardian to participate in the services.

Sec. A-62. 20-A MRSA §9701, sub-§1, as enacted by PL 1987, c. 827, §1, is amended to read:

1. Drug treatment center. "Drug treatment center" means a facility as defined in Title 22, section 8001, which provides ~~drug and alcohol abuse~~ substance use disorder treatment.

Sec. A-63. 20-A MRSA §15672, sub-§30-A, ¶D, as amended by PL 2005, c. 662, Pt. A, §41, is further amended to read:

D. Special education costs that are the costs of educational services provided to students who are temporarily unable to participate in regular school programs. Students who may be included are pregnant students, hospitalized students or those confined to their homes for illness or injury, students involved in substance abuse use disorder programs within hospital settings or in residential rehabilitation facilities licensed by the Department of Health and Human Services, ~~Office of Alcoholism and Drug Abuse Prevention~~ for less than 6 weeks duration or students suffering from other temporary conditions that prohibit their attendance at school. Students served under this paragraph may not be counted as children with disabilities for federal reporting purposes.

Sec. A-64. 22 MRSA §328, sub-§12, as enacted by PL 2001, c. 664, §2, is amended to read:

12. Health services. "Health services" means clinically related services that are diagnostic, treatment, rehabilitative services or nursing services provided by a nursing facility. "Health services" includes alcohol abuse, or drug abuse dependence, substance use disorder and mental health services.

Sec. A-65. 22 MRSA §412, sub-§2, as amended by PL 2011, c. 306, §2, is further amended to read:

2. Healthy Maine Partnerships. Healthy Maine Partnerships is established to provide appropriate essential public health services at the local level, including coordinated community-based public health promotion, active community engagement in local, district and state public health priorities and standardized community-based health assessment, that inform and link to districtwide and statewide public health system activities.

Healthy Maine Partnerships must include interested community members; leaders of formal and informal civic groups; leaders of youth, parent and older adult groups; leaders of hospitals, health centers, mental health and substance abuse use disorder treatment providers; emergency responders; local government officials; leaders in early childhood development and education; leaders of school administrative units and colleges and universities; community, social service and other nonprofit agency leaders; leaders of issue-specific networks, coalitions and associations; business leaders; leaders of faith-based groups; and law enforcement representatives. Where a service area of Healthy Maine Partnerships includes a tribal health department or health clinic, Healthy Maine Partnerships shall seek a membership or consultative relationship with leaders and members of Indian tribes or des-

ignees of health departments or health clinics of Indian tribes.

The department and other appropriate state agencies shall provide funds as available to coalitions in Healthy Maine Partnerships that meet measurable criteria as set by the department for comprehensive community health coalitions. As funds are available, a minimum of one tribal comprehensive community health coalition must be provided funding as a member of a Healthy Maine Partnerships coalition. The tribal district is eligible for the same funding opportunities offered to any other district. The tribal district or a tribe is eligible to partner with any coalition in Healthy Maine Partnerships for collaborative funding opportunities that are approved by the tribal district coordinating council or a tribal health director.

Sec. A-66. 22 MRSA §412, sub-§4, ¶B, as amended by PL 2011, c. 306, §2, is further amended to read:

B. The Maine Center for Disease Control and Prevention, in consultation with Healthy Maine Partnerships, shall ensure the invitation of persons to participate on a district coordinating council for public health and shall strive to include persons who represent the Maine Center for Disease Control and Prevention, county governments, municipal governments, Indian tribes and their tribal health departments or health clinics, city health departments, local health officers, hospitals, health systems, emergency management agencies, emergency medical services, Healthy Maine Partnerships, school districts, institutions of higher education, physicians and other health care providers, clinics and community health centers, voluntary health organizations, family planning organizations, area agencies on aging, mental health services, substance ~~abuse~~ use disorder services, organizations seeking to improve environmental health and other community-based organizations.

Sec. A-67. 22 MRSA §412, sub-§6, ¶B, as amended by PL 2011, c. 306, §2, is further amended to read:

B. Members of the Statewide Coordinating Council for Public Health are appointed as follows.

- (1) Each district coordinating council for public health, including the tribal district coordinating council, shall appoint one member.
- (2) The Director of the Maine Center for Disease Control and Prevention or the director's designee shall serve as a member.
- (3) The commissioner shall appoint an expert in behavioral health from the department to serve as a member.

(4) The Commissioner of Education shall appoint a health expert from the Department of Education to serve as a member.

(5) The Commissioner of Environmental Protection shall appoint an environmental health expert from the Department of Environmental Protection to serve as a member.

(6) The Director of the Maine Center for Disease Control and Prevention, in collaboration with the cochairs of the Statewide Coordinating Council for Public Health, shall convene a membership committee. After evaluation of the appointments to the Statewide Coordinating Council for Public Health, the membership committee shall appoint no more than 10 additional members and ensure that the total membership has at least one member who is a recognized content expert in each of the essential public health services and has representation from populations in the State facing health disparities. The membership committee shall also strive to ensure diverse representation on the Statewide Coordinating Council for Public Health from county governments, municipal governments, tribal governments, tribal health departments or health clinics, city health departments, local health officers, hospitals, health systems, emergency management agencies, emergency medical services, Healthy Maine Partnerships, school districts, institutions of higher education, physicians and other health care providers, clinics and community health centers, voluntary health organizations, family planning organizations, area agencies on aging, mental health services, substance ~~abuse~~ use disorder services, organizations seeking to improve environmental health and other community-based organizations.

Sec. A-68. 22 MRSA §567, sub-§1, as amended by PL 2009, c. 447, §21, is further amended to read:

1. Acceptable data. Except as provided in this subsection, 6 months after the adoption of rules specified in subsection 2, certification is required of any commercial, industrial, municipal, state or federal laboratory that analyzes water, soil, air, solid or hazardous waste, or radiological samples for the use of programs of the department or the Department of Environmental Protection, except as provided under chapter 411, the Maine Medical Laboratory Act; Title 26, chapter 7, subchapter 3-A, Substance ~~Abuse~~ Use Testing; and Title 29-A, section 2524, administration of tests to determine an alcohol level or drug concentration.

A laboratory operated by a waste discharge facility licensed pursuant to Title 38, section 413 may analyze

waste discharges for total suspended solids, settleable solids, biological or biochemical oxygen demand, chemical oxygen demand, pH, chlorine residual, fecal coliform, E. coli, conductivity, color, temperature and dissolved oxygen without being certified under this section. The exception provided under this paragraph applies to a laboratory testing its own samples for pollutants listed in its permit or license; pretreatment samples; and samples from other wastewater treatment plants for up to 60 days per year. The time period provided in this paragraph, which is a maximum period for each treatment plant for which analysis is provided, may be extended by memorandum of agreement between the Department of Environmental Protection and the Health and Environmental Testing Laboratory.

Sec. A-69. 22 MRSA §1341, sub-§2, ¶C, as amended by PL 2015, c. 507, §1, is further amended to read:

C. ~~Drug abuse~~ Substance use disorder prevention and treatment education;

Sec. A-70. 22 MRSA §1502, as enacted by PL 1995, c. 694, Pt. C, §8 and affected by Pt. E, §2, is amended to read:

§1502. Consent

In addition to the ability to consent to treatment for health services as provided in sections 1823 and 1908 and Title 32, sections 2595, 3292, 3817, 6221 and 7004, a minor may consent to treatment for ~~abuse of alcohol or drugs~~ substance use disorder or for emotional or psychological problems.

Sec. A-71. 22 MRSA §1511, sub-§6, ¶G, as enacted by PL 1999, c. 401, Pt. V, §1, is amended to read:

G. Substance ~~abuse~~ use disorder prevention and treatment; and

Sec. A-72. 22 MRSA §1711-C, sub-§3, ¶D, as amended by PL 1999, c. 512, Pt. A, §5 and affected by §7 and c. 790, Pt. A, §§58 and 60, is further amended to read:

D. The specific purpose or purposes of the disclosure and whether any subsequent disclosures may be made pursuant to the same authorization. An authorization to disclose health care information related to substance ~~abuse~~ use disorder treatment or care subject to the requirements of 42 United States Code, Section 290dd-2 (Supplement 1998) is governed by the provisions of that law;

Sec. A-73. 22 MRSA §1823, as amended by PL 1999, c. 90, §2, is further amended to read:

§1823. Treatment of minors

Any hospital licensed under this chapter or alcohol or drug treatment facility licensed pursuant to section 7801 that provides facilities to a minor in connec-

tion with the treatment of that minor for venereal disease or ~~abuse of drugs or alcohol~~ substance use or for the collection of sexual assault evidence through a sexual assault forensic examination is under no obligation to obtain the consent of that minor's parent or guardian or to inform that parent or guardian of the provision of such facilities so long as such facilities have been provided at the direction of the person or persons referred to in Title 32, sections 2595, 3292, 3817, 6221 or 7004. The hospital shall notify and obtain the consent of that minor's parent or guardian if that hospitalization continues for more than 16 hours.

Sec. A-74. 22 MRSA §2053, sub-§2-A, as amended by PL 2011, c. 542, Pt. A, §30, is further amended to read:

2-A. Community health or social service facility. "Community health or social service facility" means a community-based facility that provides medical or medically related diagnostic or therapeutic services, mental health services, services for persons with intellectual disabilities or autism, substance ~~abuse~~ use disorder services or family counseling and domestic abuse intervention services and is licensed by the State.

Sec. A-75. 22 MRSA §2383-C, sub-§6, as enacted by PL 1997, c. 325, §1, is amended to read:

6. Additional orders. In addition to the civil forfeitures required by subsection 5, the judge may order the person to perform specified work for the benefit of the State, the municipality or other public entity or charitable institution or to undergo evaluation, education or treatment with a licensed social worker or a licensed substance ~~abuse~~ use disorder counselor. If the judge orders the person to perform specified work or to undergo evaluation, education or treatment, the judge may suspend a forfeiture imposed pursuant to subsection 5.

Sec. A-76. 22 MRSA §3173-C, sub-§7, ¶P, as amended by PL 2003, c. 20, Pt. K, §7, is further amended to read:

P. Substance ~~abuse~~ use disorder services, \$2;

Sec. A-77. 22 MRSA §3173-D, as enacted by PL 1983, c. 752, §1, is amended to read:

§3173-D. Reimbursement for substance use disorder treatment

The department shall provide reimbursement, to the maximum extent allowable, under the United States Social Security Act, Title XIX, for ~~alcoholism and drug dependency~~ substance use disorder treatment. Treatment ~~shall~~ must include, but need not be limited to, residential treatment and outpatient care as defined in Title 24-A, section 2842.

Sec. A-78. 22 MRSA §3174-VV, last ¶, as reallocated by RR 2011, c. 2, §27, is amended to read:

The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Prior to adopting rules under this section, the department shall seek input from stakeholders and experts in the field of substance ~~abuse~~ addiction and recovery use disorder, including, but not limited to, representatives of the ~~Office of Substance Abuse Department of Health and Human Services~~ and individuals with expertise in medication-assisted treatment.

Sec. A-79. 22 MRSA §3739, sub-§2, ¶G, as amended by PL 2011, c. 657, Pt. AA, §63, is further amended to read:

G. One employee of the organizational unit of the department that provides programs and services for substance ~~abuse use disorder~~ prevention and treatment, appointed by the commissioner;

Sec. A-80. 22 MRSA §3762, sub-§20, ¶¶C to E, as reallocated by RR 2011, c. 1, §33, are amended to read:

C. The results of the 2nd drug test must be available prior to the fair hearing, if practicable. The person shall cooperate in a timely manner in submitting to the 2nd drug test. If the 2nd drug test confirms that the person is using an illegal drug, the person may avoid termination of TANF assistance by enrolling in a substance ~~abuse use disorder~~ treatment program appropriate to the type of illegal drug being used by that person.

D. If the department determines that, for good cause, a person is unable to enroll in a substance ~~abuse use disorder~~ program as required by paragraph C, the person remains eligible for TANF assistance until such time that the department determines that the person is able to enroll in a substance ~~abuse use disorder~~ treatment program.

E. The department shall terminate TANF assistance to a person who fails to request a fair hearing and submit to a 2nd drug test as described in paragraph B or who fails to participate in a substance ~~abuse use disorder~~ treatment program as required pursuant to paragraph C or D.

Sec. A-81. 22 MRSA §3788, sub-§11, ¶C, as amended by PL 1997, c. 530, Pt. A, §26, is further amended to read:

C. Subject to the requirements of the Americans with Disabilities Act, if a recipient of TANF is hindered from obtaining employment or successfully completing any portion of the ASPIRE-TANF program by reason of ~~drug or alcohol abuse substance use~~, the recipient must enter into a ~~drug or alcohol abuse~~ substance use disorder treatment program. This treatment activity may

occur at any time during the ASPIRE-TANF program.

Sec. A-82. 22 MRSA §3788, sub-§12, ¶C, as amended by PL 1997, c. 530, Pt. A, §26, is further amended to read:

C. All agencies that receive funds from any state agency for the treatment of ~~drug or alcohol abuse~~ substance use disorder must require that recipients of TANF be given priority for those services.

Sec. A-83. 22 MRSA §4004-B, as amended by PL 2013, c. 192, §2, is further amended to read:

§4004-B. Infants born affected by substance use disorder or after prenatal exposure to drugs or with fetal alcohol spectrum disorders

The department shall act to protect infants born identified as being affected by illegal substance ~~abuse~~ use, demonstrating withdrawal symptoms resulting from prenatal drug exposure, whether the prenatal exposure was to legal or illegal drugs, or having fetal alcohol spectrum disorders, regardless of whether the infant is abused or neglected. The department shall:

1. Receive notifications. Receive notifications of infants who may be affected by illegal substance ~~abuse use~~ or demonstrating withdrawal symptoms resulting from prenatal drug exposure or who have fetal alcohol spectrum disorders;

2. Investigate. Promptly investigate notifications received of infants born who may be affected by illegal substance ~~abuse use~~ or demonstrating withdrawal symptoms resulting from prenatal drug exposure or who have fetal alcohol spectrum disorders as determined to be necessary by the department to protect the infant;

3. Determine if infant is affected. Determine whether each infant for whom the department conducts an investigation is affected by illegal substance ~~abuse use~~, demonstrates withdrawal symptoms resulting from prenatal drug exposure or has fetal alcohol spectrum disorders;

4. Determine if infant is abused or neglected. Determine whether the infant for whom the department conducts an investigation is abused or neglected and, if so, determine the degree of harm or threatened harm in each case;

5. Develop plan for safe care. For each infant whom the department determines to be affected by illegal substance ~~abuse use~~, to be demonstrating withdrawal symptoms resulting from prenatal drug exposure or to have fetal alcohol spectrum disorders, develop, with the assistance of any health care provider involved in the mother's or the child's medical or mental health care, a plan for the safe care of the infant and, in appropriate cases, refer the child or mother or

both to a social service agency or voluntary substance ~~abuse~~ use disorder prevention service; and

6. Comply with section 4004. For each infant whom the department determines to be abused or neglected, comply with section 4004, subsection 2, paragraphs E and F.

Sec. A-84. 22 MRSA §4011-B, sub-§1, as amended by PL 2013, c. 192, §3, is further amended to read:

1. Notification of prenatal exposure to drugs or having fetal alcohol spectrum disorders. A health care provider involved in the delivery or care of an infant who the provider knows or has reasonable cause to suspect has been born affected by illegal substance ~~abuse~~ use, is demonstrating withdrawal symptoms that require medical monitoring or care beyond standard newborn care when those symptoms have resulted from or have likely resulted from prenatal drug exposure, whether the prenatal exposure was to legal or illegal drugs, or has fetal alcohol spectrum disorders shall notify the department of that condition in the infant. The notification required by this subsection must be made in the same manner as reports of abuse or neglect required by this subchapter.

A. This section, and any notification made pursuant to this section, may not be construed to establish a definition of "abuse" or "neglect."

B. This section, and any notification made pursuant to this section, may not be construed to require prosecution for any illegal action, including, but not limited to, the act of exposing a fetus to drugs or other substances.

Sec. A-85. 22 MRSA §4055, sub-§1-A, ¶C, as amended by PL 1997, c. 475, §9, is further amended to read:

C. The child has been placed in the legal custody or care of the department, the parent has a chronic substance ~~abuse problem~~ use disorder, and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide safe care of a child for a period of 9 months due to substance ~~abuse~~ use constitutes a chronic substance ~~abuse problem~~ use disorder;

Sec. A-86. 22 MRSA §4099-E, sub-§§1 and 3, as enacted by PL 2009, c. 155, §2, are amended to read:

1. Street and community outreach and drop-in programs. Youth drop-in centers to provide walk-in access to crisis intervention and ongoing supportive services, including one-to-one case management services on a self-referral basis and street and community outreach programs to locate, contact and provide in-

formation, referrals and services to homeless youth, youth at risk of homelessness and runaways. Information, referrals and services provided may include, but are not limited to family reunification services; conflict resolution or mediation counseling; assistance in obtaining temporary emergency shelter; case management aimed at obtaining food, clothing, medical care or mental health counseling; counseling regarding violence, prostitution, substance ~~abuse~~ use disorder, sexually transmitted diseases, HIV and pregnancy; referrals to other agencies that provide support services to homeless youth, youth at risk of homelessness and runaways; assistance with education, employment and independent living skills; aftercare services; and specialized services for highly vulnerable runaways and homeless youth, including teen parents, sexually exploited youth and youth with mental illness or developmental disabilities;

3. Transitional living programs. Transitional living programs to help homeless youth find and maintain safe, dignified housing. The program may also provide rental assistance and related supportive services or may refer youth to other organizations or agencies that provide such services. Services provided may include, but are not limited to, provision of safe, dignified housing; educational assessment and referrals to educational programs; career planning, employment, job skills training and independent living skills training; job placement; budgeting and money management; assistance in securing housing appropriate to needs and income; counseling regarding violence, prostitution, substance ~~abuse~~ use disorder, sexually transmitted diseases and pregnancy; referral for medical services or chemical dependency treatment; parenting skills; self-sufficiency support services or life skills training; and aftercare and follow-up services.

Sec. A-87. 22 MRSA §7245, as enacted by PL 2003, c. 483, §1, is amended to read:

§7245. Legislative intent

It is the intent of the Legislature that the prescription monitoring program established pursuant to this chapter serve as a means to promote the public health and welfare and to detect and prevent substance ~~abuse~~ use disorder. This chapter is not intended to interfere with the legitimate medical use of controlled substances.

Sec. A-88. 22 MRSA §7261, sub-§1, ¶D, as enacted by PL 2011, c. 217, §1, is amended to read:

D. Other uses of prescription drug data authorized by state law for purposes of curtailing ~~drug~~ abuse illegal substance use and diversion; and

Sec. A-89. 22-A MRSA §201, sub-§2-A, ¶C, as enacted by PL 2007, c. 539, Pt. N, §42, is amended to read:

C. Integrated services responsibilities, including but not limited to:

- (1) Adult and elder services, including but not limited to aging, substance ~~abuse~~ use disorder, mental health and disability services;
- (2) Child and family services responsibilities, including but not limited to child welfare, children's behavioral health and early childhood services; and
- (3) Regional operations.

Sec. A-90. 22-A MRSA §203, sub-§1, ¶F, as enacted by PL 2003, c. 689, Pt. A, §1, is amended to read:

F. Substance ~~abuse~~ use disorder prevention and treatment services.

Sec. A-91. 22-A MRSA §206, sub-§8, as enacted by PL 2007, c. 539, Pt. N, §45, is amended to read:

8. Substance use disorder prevention and treatment. The commissioner shall administer and carry out the purposes of the Maine Substance ~~Abuse~~ Use Disorder Prevention and Treatment Act.

Sec. A-92. 22-A MRSA §207, sub-§7, as amended by PL 2011, c. 542, Pt. A, §52, is further amended to read:

7. Contracts with health care servicing entities. The commissioner may enter into contracts with health care servicing entities for the financing, management and oversight of the delivery of mental health, adult developmental and substance ~~abuse~~ use disorder services to clients pursuant to a state or federally sponsored health program in which the department participates or that the department administers. For the purposes of this subsection, "health care servicing entity" means a partnership, association, corporation, limited liability company or other legal entity that enters into a contract with the State to provide or arrange for the provision of a defined set of health care services; to assume responsibility for some aspects of quality assurance, utilization review, provider credentialing and provider relations or other related network management functions; and to assume financial risk for provision of such services to clients through capitation reimbursement or other risk-sharing arrangements. "Health care servicing entity" does not include insurers or health maintenance organizations. In contracting with health care servicing entities, the commissioner:

A. Shall include in all contracts with the health care servicing entities standards, developed in consultation with the Superintendent of Insurance, to be met by the contracting entity in the areas of financial solvency, quality assurance, utilization review, network sufficiency, access to services,

network performance, complaint and grievance procedures and records maintenance;

B. Prior to contracting with any health care servicing entity, must have in place a memorandum of understanding with the Superintendent of Insurance for the provision of technical assistance, which must provide for the sharing of information between the department and the superintendent and the analysis of that information by the superintendent as it relates to the fiscal integrity of the contracting entity;

C. May require periodic reporting by the health care servicing entity as to activities and operations of the entity, including the entity's activities undertaken pursuant to commercial contracts with licensed insurers and health maintenance organizations;

D. May share with the Superintendent of Insurance all documents filed by the health care servicing entity, including documents subject to confidential treatment if the information is treated with the same degree of confidentiality as is required of the department; and

E. May make all necessary rules for the administration of contracts with health care servicing entities. All rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-93. 24 MRSA §2325-A, sub-§5-C, ¶A-1, as enacted by PL 2003, c. 20, Pt. VV, §5 and affected by §25, is amended to read:

A-1. All group contracts must provide, at a minimum, benefits according to paragraph B, subparagraph (1) for a person receiving medical treatment for any of the following categories of mental illness as defined in the Diagnostic and Statistical Manual, except for those that are designated as "V" codes by the Diagnostic and Statistical Manual:

- (1) Psychotic disorders, including schizophrenia;
- (2) Dissociative disorders;
- (3) Mood disorders;
- (4) Anxiety disorders;
- (5) Personality disorders;
- (6) Paraphilias;
- (7) Attention deficit and disruptive behavior disorders;
- (8) Pervasive developmental disorders;
- (9) Tic disorders;

(10) Eating disorders, including bulimia and anorexia; and

(11) Substance ~~abuse-related~~ use disorders.

For the purposes of this paragraph, the mental illness must be diagnosed by a licensed allopathic or osteopathic physician or a licensed psychologist who is trained and has received a doctorate in psychology specializing in the evaluation and treatment of mental illness.

Sec. A-94. 24 MRSA §2329, as amended by PL 2011, c. 320, Pt. A, §2, is further amended to read:

§2329. Equitable health care for substance use disorder treatment

1. Purpose. The Legislature recognizes that ~~alcoholism and drug dependency constitute~~ substance use disorder constitutes a major health ~~problems~~ problem in the State and in the Nation. The Legislature further recognizes that ~~alcoholism is a disease and that alcoholism and drug dependency~~ substance use disorder is a disease that can be effectively treated. As such, ~~alcoholism and drug dependency warrant~~ substance use disorder warrants the same attention from the health care industry as other serious diseases and illnesses. The Legislature further recognizes that health care contracts, at times, fail to provide adequate benefits for the treatment of ~~alcoholism and drug dependency~~ substance use disorder, which results in more costly health care for treatment of complications caused by the lack of early intervention and other treatment services for persons suffering from ~~these illnesses~~ substance use disorder. This situation causes a higher health care, social, law enforcement and economic cost to the citizens of this State than is necessary, including the need for the State to provide treatment to some subscribers at public expense. To assist the many citizens of this State who suffer from ~~these illnesses~~ this illness in a more ~~cost-effective~~ cost-effective way, the Legislature declares that certain health care coverage providing benefits for the treatment of the illness of ~~alcoholism and drug dependency~~ shall substance use disorder must be included in all group health care contracts.

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

A. "Outpatient care" means care rendered by a state-licensed, approved or certified detoxification, residential treatment or outpatient program, or partial hospitalization program on a periodic basis, including, but not limited to, patient diagnosis, assessment and treatment, individual, family and group counseling and educational and support services.

B. "Residential treatment" means services at a facility that provides care 24 hours daily to one or

more patients, including, but not limited to, the following services: ~~Room~~ room and board; medical, nursing and dietary services; patient diagnosis, assessment and treatment; individual, family and group counseling; and educational and support services, including a designated unit of a licensed health care facility providing any and all other services specified in this paragraph to patients with ~~the illnesses of alcoholism and drug dependency~~ substance use disorder.

C. "Treatment plan" means a written plan initiated at the time of admission, approved by a Doctor of Medicine, a Doctor of Osteopathy or a Licensed Substance Abuse Counselor employed by a certified or licensed substance ~~abuse use disorder~~ program, including, but not limited to, the patient's medical, ~~drug and alcoholism~~ substance use disorder history; record of physical examination; diagnosis; assessment of physical capabilities; mental capacity; orders for medication, diet and special needs for the patient's health or safety and treatment, including medical, psychiatric, psychological, social services, individual, family and group counseling; and educational, support and referral services.

3. Requirement. Every nonprofit hospital or medical service organization ~~which that~~ issues group health care contracts providing coverage for hospital care to residents of this State shall provide benefits as required in this section to any subscriber or other person covered under those contracts for the treatment of ~~alcoholism and other drug dependency~~ substance use disorder pursuant to a treatment plan.

4. Services; providers. Each group contract ~~shall~~ must provide, at a minimum, for the following coverage, pursuant to a treatment plan:

A. Residential treatment at a hospital or free-standing residential treatment center ~~which that~~ is licensed, certified or approved by the State; and

B. Outpatient care rendered by state licensed, certified or approved providers who have contracted with the nonprofit hospital or medical service organization under terms and conditions ~~which that~~ the organization ~~deems~~ considers satisfactory to its membership.

Treatment or confinement at any facility ~~shall~~ may not preclude further or additional treatment at any other eligible facility, provided that the benefit days used do not exceed the total number of benefit days provided for under the contract.

5. Exceptions. This section ~~shall~~ does not apply to employee group insurance contracts issued to employers with 20 or fewer employees insured under the group contract or to group contracts designed primarily to supplement the Civilian Health and Medical Program of the Uniformed Services, as defined in the

United States Code, Title 10, Section 1072, subsection 4.

6. Limits; coinsurance; deductibles. Any policy or contract ~~which that~~ provides coverage for the services required by this section may contain provisions for maximum benefits and coinsurance, and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

7. Notice. At the time of delivery or renewal, the nonprofit hospital or medical service organization shall provide written notification to all individuals eligible for benefits under group policies or contracts of ~~these alcoholism and drug dependency~~ substance use disorder benefits.

8. Confidentiality. ~~Alcoholism and drug~~ Substance use disorder treatment patient records are confidential.

9. Reports to the Superintendent of Insurance. Every nonprofit hospital or medical service organization subject to this section shall report its experience for each calendar year beginning with 1984 to the superintendent not later than April 30th of the following year. The report ~~shall~~ must be in a form prescribed by the superintendent and ~~shall~~ must include the amount of claims paid in this State for the services required by this section and the total amount of claims paid in this State for group health care contracts, both separated between those paid for inpatient and outpatient services. The superintendent shall compile this data for all nonprofit hospital or medical service organizations in an annual report.

10. Application; expiration. The requirements of this section ~~shall~~ apply to all policies and any certificates or contracts executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 1984. For purposes of this section, all contracts ~~shall be~~ are deemed to be renewed no later than the next yearly anniversary of the contract date.

Sec. A-95. 24-A MRSA §2842, as corrected by RR 2015, c. 2, §14, is amended to read:

§2842. Equitable health care for substance use disorder treatment

1. Purpose. The Legislature recognizes that ~~alcoholism and drug dependency constitute~~ substance use disorder constitutes a major health ~~problems~~ problem in the State and in the Nation. The Legislature further recognizes that ~~alcoholism is a disease and that alcoholism and drug dependency~~ substance use disorder is a disease that can be effectively treated. As such, ~~alcoholism and drug dependency warrant~~ substance use disorder warrants the same attention from the health care industry as other serious diseases and illnesses. The Legislature further recognizes that health insurance contracts, at times, fail to provide adequate bene-

fits for the treatment of ~~alcoholism and drug dependency~~ substance use disorder, which results in more costly health care for treatment of complications caused by the lack of early intervention and other treatment services for persons suffering from ~~these illnesses~~ substance use disorder. This situation causes a higher health care, social, law enforcement and economic cost to the citizens of this State than is necessary, including the need for the State to provide treatment to some insureds at public expense. To assist the many citizens of this State who suffer from ~~these illnesses~~ this illness in a more ~~cost-effective~~ cost-effective way, the Legislature declares that certain health insurance coverage providing benefits for the treatment of the illness of ~~alcoholism and drug dependency~~ substance use disorder must be included in all group health insurance contracts.

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

A. "Outpatient care" means care rendered by a state-licensed, approved or certified detoxification, residential treatment or outpatient program, or partial hospitalization program on a periodic basis, including, but not limited to, patient diagnosis, assessment and treatment, individual, family and group counseling and educational and support services.

B. "Residential treatment" means services at a facility that provides care 24 hours daily to one or more patients, including, but not limited to, the following services: ~~Room~~ room and board; medical, nursing and dietary services; patient diagnosis, assessment and treatment; individual, family and group counseling; and educational and support services, including a designated unit of a licensed health care facility providing any and all other services specified in this paragraph to patients with ~~the illnesses of alcoholism and drug dependency~~ substance use disorder.

C. "Treatment plan" means a written plan initiated at the time of admission, approved by a Doctor of Medicine, a Doctor of Osteopathy or a Registered Substance Abuse Counselor employed by a certified or licensed ~~substance abuse~~ substance use disorder program, including, but not limited to, the patient's medical, ~~drug and alcoholism~~ substance use disorder history; record of physical examination; diagnosis; assessment of physical capabilities; mental capacity; orders for medication, diet and special needs for the patient's health or safety and treatment, including medical, psychiatric, psychological, social services, individual, family and group counseling; and educational, support and referral services.

3. Requirement. Every insurer ~~which that~~ issues group health care contracts providing coverage for

hospital care to residents of this State shall provide benefits as required in this section to any subscriber or other person covered under those contracts for the treatment of ~~alcoholism and other drug dependency~~ substance use disorder pursuant to a treatment plan.

4. Services; providers. Each group contract ~~shall~~ must provide, at a minimum, for the following coverage, pursuant to a treatment plan:

A. Residential treatment at a hospital or free-standing residential treatment center ~~which that~~ is licensed, certified or approved by the State; and

B. Outpatient care rendered by state licensed, certified or approved providers.

Treatment or confinement at any facility ~~shall~~ may not preclude further or additional treatment at any other eligible facility, provided that the benefit days used do not exceed the total number of benefit days provided for under the contract.

5. Exceptions. This section ~~shall~~ does not apply to employee group insurance policies issued to employers with 20 or fewer employees insured under the group policy or to group policies designed primarily to supplement the Civilian Health and Medical Program of the Uniformed Services, as described in the United States Code, Title 10, Section 1072, subsection 4.

6. Limits; coinsurance; deductibles. Any policy or contract ~~which that~~ provides coverage for the services required by this section may contain provisions for maximum benefits and coinsurance, and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

7. Notice. At the time of delivery or renewal, the group health insurer shall provide written notification to all individuals eligible for benefits under group policies or contracts of ~~these alcoholism and drug dependency~~ substance use disorder benefits.

8. Confidentiality. ~~Alcoholism and drug~~ Substance use disorder treatment patient records are confidential.

9. Reports to the Superintendent of Insurance. Every insurer subject to this section shall report its experience for each calendar year beginning with 1984 to the superintendent not later than April 30th of the following year. The report ~~shall~~ must be in a form prescribed by the superintendent and ~~shall~~ must include the amount of claims paid in this State for the services required by this section and the total amount of claims paid in this State for group health care contracts, both separated between those paid for inpatient and outpatient services. The superintendent shall compile this data for all insurers in an annual report.

10. Application; expiration. The requirements of this section ~~shall~~ apply to all policies and any cer-

tificates or contracts executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 1984. For purposes of this section, all contracts ~~shall be~~ are deemed to be renewed no later than the next yearly anniversary of the contract date.

Sec. A-96. 24-A MRSA §2843, sub-§5-C, ¶A-1, as enacted by PL 2003, c. 20, Pt. VV, §14 and affected by §25, is amended to read:

A-1. All group contracts must provide, at a minimum, benefits according to paragraph B, subparagraph (1) for a person receiving medical treatment for any of the following categories of mental illness as defined in the Diagnostic and Statistical Manual, except for those that are designated as "V" codes by the Diagnostic and Statistical Manual:

- (1) Psychotic disorders, including schizophrenia;
- (2) Dissociative disorders;
- (3) Mood disorders;
- (4) Anxiety disorders;
- (5) Personality disorders;
- (6) Paraphilias;
- (7) Attention deficit and disruptive behavior disorders;
- (8) Pervasive developmental disorders;
- (9) Tic disorders;
- (10) Eating disorders, including bulimia and anorexia; and
- (11) Substance ~~abuse-related~~ use disorders.

For the purposes of this paragraph, the mental illness must be diagnosed by a licensed allopathic or osteopathic physician or a licensed psychologist who is trained and has received a doctorate in psychology specializing in the evaluation and treatment of mental illness.

Sec. A-97. 24-A MRSA §4222-B, sub-§14, as amended by PL 2001, c. 258, Pt. G, §3, is further amended to read:

14. The requirement of filing a report of experience of claims payment for ~~alcoholism and drug dependency~~ substance use disorder treatment in the format prescribed by section 2842, subsection 9; for chiropractic services in the format prescribed by section 2748, subsection 3 and section 2840-A, subsection 3; and for breast cancer screening services in the format prescribed by section 2745-A, subsection 4 and section 2837-A, subsection 4 applies to health maintenance organizations.

Sec. A-98. 24-A MRSA §4234-A, sub-§6, ¶A-1, as enacted by PL 2003, c. 20, Pt. VV, §20 and affected by §25, is amended to read:

A-1. All group contracts must provide, at a minimum, benefits according to paragraph B, subparagraph (1) for a person receiving medical treatment for any of the following categories of mental illness as defined in the Diagnostic and Statistical Manual, except for those designated as "V" codes in the Diagnostic and Statistical Manual:

- (1) Psychotic disorders, including schizophrenia;
- (2) Dissociative disorders;
- (3) Mood disorders;
- (4) Anxiety disorders;
- (5) Personality disorders;
- (6) Paraphilias;
- (7) Attention deficit and disruptive behavior disorders;
- (8) Pervasive developmental disorders;
- (9) Tic disorders;
- (10) Eating disorders, including bulimia and anorexia; and
- (11) Substance ~~abuse~~-related use disorders.

For the purposes of this paragraph, the mental illness must be diagnosed by a licensed allopathic or osteopathic physician or a licensed psychologist who is trained and has received a doctorate in psychology specializing in the evaluation and treatment of mental illness.

Sec. A-99. 24-A MRSA §6917, sub-§3, ¶B, as enacted by PL 2009, c. 359, §4 and affected by §8, is amended to read:

B. "Health and medical services" includes, but is not limited to, any services included in the furnishing of medical care, dental care to the extent covered under a medical insurance policy, pharmaceutical benefits or hospitalization, including but not limited to services provided in a hospital or other medical facility; ancillary services, including but not limited to ambulatory services; physician and other practitioner services, including but not limited to services provided by a physician's assistant, nurse practitioner or midwife; and behavioral health services, including but not limited to mental health and substance ~~abuse~~ use disorder services.

Sec. A-100. 25 MRSA §2002, sub-§§3 and 4, as amended by PL 1993, c. 524, §1, are further amended to read:

3. Drug user. "Drug ~~abuser~~ user" has the same meaning as set forth in Title 5, section 20003, subsection 10.

4. Person with substance use disorder. "~~Drug addict~~ Person with substance use disorder" has the same meaning as set forth in Title 5, section 20003, subsection ~~4~~ 17-A.

Sec. A-101. 25 MRSA §2002, sub-§5, as amended by PL 1993, c. 524, §1, is repealed.

Sec. A-102. 25 MRSA §2003, sub-§1, ¶D, as amended by PL 2011, c. 298, §7, is further amended to read:

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 classi-

fied 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~~ user or a person with substance use disorder?

(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

Sec. A-103. 25 MRSA §2005, sub-§3, as amended by PL 1989, c. 917, §15 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

3. Reapplication. If a permit has been revoked solely under subsection 1, paragraph D, the former permit holder may reapply upon successful completion of a substance ~~abuse~~ use disorder treatment program approved by the Department of Health and Human Services as appropriate for the permit holder's problem or condition. Except as specified in this subsection, ~~n~~ a person, otherwise eligible, who has had a permit revoked, is not eligible for reapplication until the expiration of 5 years from the date of revocation.

Sec. A-104. 25 MRSA §5101, as enacted by PL 2015, c. 481, Pt. E, §1, is amended to read:

§5101. Substance Use Disorder Assistance Program

1. Substance Use Disorder Assistance Program. The Substance ~~Abuse~~ Use Disorder Assistance Program, referred to in this chapter as "the program," is established to support persons with presumed substance use ~~disorders~~ disorder by providing grants to municipalities and counties to carry out projects designed to reduce substance ~~abuse~~ use, substance ~~abuse-related~~ use-related crimes and recidivism.

2. Eligibility; program targets; projects. Grants may be awarded to:

A. Municipal or county governments or regional jails for projects designed to assist persons with presumed substance use ~~disorders~~ disorder by diverting alleged low-level offenders into community-based treatment and support services. Projects may include, but are not limited to:

(1) Referral of program participants to evidence-based treatment programs, including medically assisted treatment; and

(2) Provision of case management services to program participants in order to secure appropriate treatment and support services such as housing, health care, job training and mental health services for program participants; and

B. County governments or regional jails for projects in county or regional jails designed to assist persons with presumed substance use ~~disorders~~ disorder. Projects may include, but are not limited to:

(1) Provision of evidence-based treatment programs, including medically assisted treatment, to jail inmates; and

(2) Provision of case management or other support services to program participants to assist in transition from jail upon release.

3. Requirements. A grant application for a project described in subsection 2 must include the following:

A. A statement of purpose and measurable goals for the project and use for the funds;

B. The elements of the project, which must include the targeted population, the nature of services or assistance to be provided and expected outcomes;

C. For diversion projects, a statement of the municipality's or county's diversion policy, including criteria for selecting participants for the project;

D. A review of other substance ~~abuse~~ use disorder services available in the applicant municipality or county and communities adjacent to the ap-

plicant municipality or county and a statement of the unmet needs to be addressed by the project;

E. A review of efforts to collaborate among relevant law enforcement agencies, treatment providers, harm reduction services, recovery support services and other community resources and a summary of collaborative approaches included in the project, if any; and

F. A summary of data to be collected to assess the effectiveness of the project and the methodology that will be used to make that assessment. The data to be collected must include measurements of the long-term health, treatment and criminal justice involvement outcomes for participants and must be included in reports filed under subsection 6 as part of a rigorous evaluation process.

4. Selection of grant recipients; steering committee. The Commissioner of Public Safety shall review applications submitted by municipalities and counties for grants under this chapter. Preference must be given to collaborative approaches that include treatment providers or community-based organizations. The following steering committee shall advise the Commissioner of Public Safety in selecting grant recipients. The steering committee consists of the Commissioner of Corrections or the commissioner's designee and representatives of the following organizations, programs and associations selected by the Commissioner of Public Safety from suggestions provided by the organizations, programs and associations: a statewide organization of police chiefs; a statewide organization of sheriffs; a statewide organization representing physicians; a statewide organization representing prosecutors; a statewide organization representing providers of legal services for the indigent; peer recovery programs; and harm reduction associations.

5. Administration of funds. The policy board established in this State to carry out the State's responsibilities under the federal Justice Assistance Act of 1984, the federal Anti-Drug Abuse Act of 1986, the federal Anti-Drug Abuse Act of 1988 and the federal Violent Crime Control and Law Enforcement Act of 1994, known as "the Justice Assistance Council," shall administer grant funds appropriated for use under this chapter and disburse the funds to municipalities, counties and regional jails selected under subsection 4. The department may retain up to 5% of funds to cover administrative expenses.

6. Reports. A recipient of a grant under subsection 4 shall report to the Commissioner of Public Safety annually on the anniversary date of the grant award regarding the status of the project for which the grant was awarded. The report must include a description of how the grant funds were spent, the results of the project and any recommendations for modification

of the project, including any available information concerning the project's effectiveness in reducing substance ~~abuse~~ use disorder and recidivism.

Sec. A-105. 26 MRSA §681, as amended by PL 2011, c. 196, §1, is further amended to read:

§681. Purpose; applicability

1. Purpose. This subchapter is intended to:

A. Protect the privacy rights of individual employees in the State from undue invasion by employers through the use of substance ~~abuse~~ use tests while allowing the use of tests when the employer has a compelling reason to administer a test;

B. Ensure that, when substance ~~abuse~~ use tests are used, proper test procedures are employed to protect the privacy rights of employees and applicants and to achieve reliable and accurate results;

C. Ensure that an employee with a substance ~~abuse problem~~ use disorder receives an opportunity for rehabilitation and treatment of the disease and returns to work as quickly as possible; and

D. Eliminate drug use in the workplace.

2. Employer discretion. This subchapter does not require or encourage employers to conduct substance ~~abuse~~ use testing of employees or applicants. An employer who chooses to conduct such testing is limited by this subchapter, but may establish policies ~~which that~~ are supplemental to and not inconsistent with this subchapter.

3. Collective bargaining agreements. This subchapter does not prevent the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this subchapter.

A labor organization with a collective bargaining agreement effective in the State may conduct a program of substance ~~abuse~~ use testing of its members. The program may include testing of new members and periodic testing of all members. It may not include random testing of members. The program may be voluntary. The results may not be used to preclude referral to a job where testing is not required or to otherwise discipline a member. Sample collection and testing must be done in accordance with this subchapter. Approval of the Department of Labor is not required.

4. Home rule authority preempted. No A municipality may not enact any ordinance under its home rule authority regulating an employer's use of substance ~~abuse~~ use tests.

5. Contracts for work out of State. All employment contracts subject to the laws of this State ~~shall~~ must include an agreement that this subchapter

will apply to any employer who hires employees to work outside the State.

6. Medical examinations. This subchapter does not prevent an employer from requiring or performing medical examinations of employees or applicants or from conducting medical screenings to monitor exposure to toxic or other harmful substances in the workplace, ~~provided that as long as~~ these examinations are not used to avoid the restrictions of this subchapter. ~~No such~~ An examination under this subsection may not include the use of any substance abuse use test except in compliance with this subchapter.

7. Other discipline unaffected. This subchapter does not prevent an employer from establishing rules related to the possession or use of substances ~~of abuse~~ by employees, including convictions for ~~drug-related~~ substance-related offenses, and taking action based upon a violation of any of those rules, except when a substance ~~abuse use~~ test is required, requested or suggested by the employer or used as the basis for any disciplinary action.

8. Nuclear power plants; federal law. The following limitations apply to the application of this subchapter.

A. This subchapter does not apply to nuclear electrical generating facilities and their employees, including independent contractors and employees of independent contractors who are working at nuclear electrical generating facilities.

C. This subchapter does not apply to any employer subject to a federally mandated ~~drug and alcohol~~ substance use testing program, including, but not limited to, testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V, and its employees, including independent contractors and employees of independent contractors who are working for or at the facilities of an employer who is subject to such a federally mandated ~~drug and alcohol~~ substance use testing program.

Sec. A-106. 26 MRSA §682, as amended by PL 2007, c. 695, Pt. B, §5, is further amended to read:

§682. Definitions

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

1. Applicant. "Applicant" means any person seeking employment from an employer. ~~The term~~ "Applicant" includes any person using an employment agency's services.

2. Employee. "Employee" means a person who is permitted, required or directed by any employer to engage in any employment for consideration of direct gain or profit. A person separated from employment

while receiving a mandated benefit, including but not limited to workers' compensation, unemployment compensation and family medical leave, is an employee for the period the person receives the benefit and for a minimum of 30 days beyond the termination of the benefit. A person separated from employment while receiving a nonmandated benefit is an employee for a minimum of 30 days beyond the separation.

A. A full-time employee is an employee who customarily works 30 hours or more each week.

3. Employer. "Employer" means any person, partnership, corporation, association or other legal entity, public or private, that employs one or more employees. ~~The term~~ "Employer" also includes an employment agency.

3-A. Medically disqualified. "Medically disqualified" means that an employee is prohibited by a federal law or regulation, or any rules adopted by the State's Department of Public Safety that incorporate any federal laws or regulations related to substance ~~abuse use~~ testing for motor carriers, from continuing in the employee's former employment position due to the result of a substance ~~abuse use~~ test conducted under the federal law or regulation or the Department of Public Safety rule.

4. Negative test result. "Negative test result" means a test result that indicates that:

A. A substance ~~of abuse~~ is not present in the tested sample; or

B. A substance ~~of abuse~~ is present in the tested sample in a concentration below the cutoff level.

5. Positive test result. "Positive test result" means a test result that indicates the presence of a substance ~~of abuse~~ in the tested sample above the cutoff level of the test.

A. "Confirmed positive result" means a confirmation test result that indicates the presence of a substance ~~of abuse~~ above the cutoff level in the tested sample.

6. Probable cause. "Probable cause" means a reasonable ground for belief in the existence of facts that induce a person to believe that an employee may be under the influence of a substance ~~of abuse~~, provided that the existence of probable cause may not be based exclusively on any of the following:

A. Information received from an anonymous informant;

B. Any information tending to indicate that an employee may have possessed or used a substance ~~of abuse~~ off duty, except when the employee is observed possessing or ingesting any substance ~~of abuse~~ either while on the employer's premises or in the proximity of the employer's premises during

or immediately before the employee's working hours; or

C. A single work-related accident.

7. Substance use test. "Substance ~~abuse~~ use test" means any test procedure designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of substances ~~of abuse~~. The term "Substance use test" does not include tests designed to determine blood-alcohol concentration levels from a sample of an individual's breath.

A. "Screening test" means an initial substance ~~abuse~~ use test performed through the use of immunoassay technology or a federally recognized substance ~~abuse~~ use test, or a test technology of similar or greater accuracy and reliability approved by the Department of Health and Human Services under rules adopted under section 687, and that is used as a preliminary step in detecting the presence of substances ~~of abuse~~.

(1) A screening test of an applicant's urine or saliva may be performed at the point of collection through the use of a noninstrumented point of collection test device approved by the federal Food and Drug Administration. Section 683, subsection 5-A governs the use of such tests.

B. "Confirmation test" means a 2nd substance ~~abuse~~ use test that is used to verify the presence of a substance ~~of abuse~~ indicated by an initial positive screening test result and is a federally recognized substance ~~abuse~~ use test or is performed through the use of liquid or gas chromatography-mass spectrometry.

C. "Federally recognized substance ~~abuse~~ use test" means any substance ~~abuse~~ use test recognized by the federal Food and Drug Administration as accurate and reliable through the administration's clearance or approval process.

8. Substance. "Substance ~~of abuse~~" means any scheduled drug, alcohol or other drug, or any of their metabolites.

A. "Alcohol" has the same meaning as found in Title 28-A, section 2, subsection 2.

B. "Drug" has the same meaning as found in Title 32, section 13702-A, subsection 11.

C. "Scheduled drug" has the same meaning as found in Title 17-A, section 1101, subsection 11.

Sec. A-107. 26 MRSA §683, as amended by PL 2011, c. 657, Pt. AA, §72, is further amended to read:

§683. Testing procedures

~~No~~ An employer may not require, request or suggest that any employee or applicant submit to a sub-

stance ~~abuse~~ use test except in compliance with this section. All actions taken under a substance ~~abuse~~ use testing program ~~shall~~ must comply with this subchapter, rules adopted under this subchapter and the employer's written policy approved under section 686.

1. Employee assistance program required. Before establishing any substance ~~abuse~~ use testing program for employees, an employer with over 20 full-time employees must have a functioning employee assistance program.

A. The employer may meet this requirement by participating in a cooperative employee assistance program that serves the employees of more than one employer.

B. The employee assistance program must be certified by the Department of Health and Human Services under rules adopted pursuant to section 687. The rules must ensure that the employee assistance programs have the necessary personnel, facilities and procedures to meet minimum standards of professionalism and effectiveness in assisting employees.

2. Written policy. Before establishing any substance ~~abuse~~ use testing program, an employer ~~must~~ shall develop or, as required in section 684, subsection 3, paragraph C, ~~must~~ appoint an employee committee to develop a written policy in compliance with this subchapter providing for, at a minimum:

A. The procedure and consequences of an employee's voluntary admission of a substance ~~abuse~~ use problem and any available assistance, including the availability and procedure of the employer's employee assistance program;

B. When substance ~~abuse~~ use testing may occur. The written policy must describe:

(1) Which positions, if any, will be subject to testing, including any positions subject to random or arbitrary testing under section 684, subsection 3. For applicant testing and probable cause testing of employees, an employer may designate that all positions are subject to testing; and

(2) The procedure to be followed in selecting employees to be tested on a random or arbitrary basis under section 684, subsection 3;

C. The collection of samples.

(1) The collection of any sample for use in a substance ~~abuse~~ use test must be conducted in a medical facility and supervised by a licensed physician or nurse. A medical facility includes a first aid station located at the work site.

(2) An employer may not require an employee or applicant to remove any clothing

for the purpose of collecting a urine sample, except that:

- (a) An employer may require that an employee or applicant leave any personal belongings other than clothing and any unnecessary coat, jacket or similar outer garments outside the collection area; or
 - (b) If it is the standard practice of an off-site medical facility to require the removal of clothing when collecting a urine sample for any purpose, the physician or nurse supervising the collection of the sample in that facility may require the employee or applicant to remove their clothing.
- (3) ~~No~~ An employee or applicant may not be required to provide a urine sample while being observed, directly or indirectly, by another individual.
- (4) The employer may take additional actions necessary to ensure the integrity of a urine sample if the sample collector or testing laboratory determines that the sample may have been substituted, adulterated, diluted or otherwise tampered with in an attempt to influence test results. The Department of Health and Human Services shall adopt rules governing when those additional actions are justified and the scope of those actions. These rules may not permit the direct or indirect observation of the collection of a urine sample. If an employee or applicant is found to have twice substituted, adulterated, diluted or otherwise tampered with the employee's or applicant's urine sample, as determined under the rules adopted by the department, the employee or applicant is deemed to have refused to submit to a substance ~~abuse~~ use test.
- (5) If the employer proposes to use the type of screening test described in section 682, subsection 7, paragraph A, subparagraph (1), the employer's policy must include:
- (a) Procedures to ensure the confidentiality of test results as required in section 685, subsection 3; and
 - (b) Procedures for training persons performing the test in the proper manner of collecting samples and reading results, maintaining a proper chain of custody and complying with other applicable provisions of this subchapter;
- D. The storage of samples before testing sufficient to inhibit deterioration of the sample;

E. The chain of custody of samples sufficient to protect the sample from tampering and to verify the identity of each sample and test result;

F. The substances ~~of abuse~~ to be tested for;

G. The cutoff levels for both screening and confirmation tests at which the presence of a substance ~~of abuse~~ in a sample is considered a positive test result.

(1) Cutoff levels for confirmation tests for marijuana may not be lower than 15 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for urine samples.

(2) The Department of Health and Human Services shall adopt rules under section 687 regulating screening and confirmation cutoff levels for other substances ~~of abuse~~, including those substances tested for in blood samples under subsection 5, paragraph B, to ensure that levels are set within known tolerances of test methods and above mere trace amounts. An employer may request that the Department of Health and Human Services establish a cutoff level for any substance ~~of abuse~~ for which the department has not established a cutoff level.

(3) Notwithstanding subparagraphs (1) and (2), if the Department of Health and Human Services does not have established cutoff levels or procedures for any specific federally recognized substance ~~abuse~~ use test, the minimum cutoff levels and procedures that apply are those set forth in the Federal Register, Volume 69, No. 71, sections 3.4 to 3.7 on pages 19697 and 19698;

H. The consequences of a confirmed positive substance ~~abuse~~ use test result;

I. The consequences for refusal to submit to a substance ~~abuse~~ use test;

J. Opportunities and procedures for rehabilitation following a confirmed positive result;

K. A procedure under which an employee or applicant who receives a confirmed positive result may appeal and contest the accuracy of that result. The policy must include a mechanism that provides an opportunity to appeal at no cost to the appellant; and

L. Any other matters required by rules adopted by the Department of Labor under section 687.

An employer ~~must~~ shall consult with the employer's employees in the development of any portion of a substance ~~abuse~~ use testing policy under this subsection that relates to the employees. The employer is not required to consult with the employees on those por-

tions of a policy that relate only to applicants. The employer shall send a copy of the final written policy to the Department of Labor for review under section 686. The employer may not implement the policy until the Department of Labor approves the policy. The employer shall send a copy of any proposed change in an approved written policy to the Department of Labor for review under section 686. The employer may not implement the change until the Department of Labor approves the change.

3. Copies to employees and applicants. The employer shall provide each employee with a copy of the written policy approved by the Department of Labor under section 686 at least 30 days before any portion of the written policy applicable to employees takes effect. The employer shall provide each employee with a copy of any change in a written policy approved by the Department of Labor under section 686 at least 60 days before any portion of the change applicable to employees takes effect. The Department of Labor may waive the 60-day notice for the implementation of an amendment covering employees if the amendment was necessary to comply with the law or if, in the judgment of the department, the amendment promotes the purpose of the law and does not lessen the protection of an individual employee. If an employer intends to test an applicant, the employer shall provide the applicant with a copy of the written policy under subsection 2 before administering a substance ~~abuse~~ use test to the applicant. The 30-day and 60-day notice periods provided for employees under this subsection do not apply to applicants.

4. Consent forms prohibited. An employer may not require, request or suggest that any employee or applicant sign or agree to any form or agreement that attempts to:

- A. Absolve the employer from any potential liability arising out of the imposition of the substance ~~abuse~~ use test; or
- B. Waive an employee's or applicant's rights or eliminate or diminish an employer's obligations under this subchapter except as provided in subsection 4-A.

Any form or agreement prohibited by this subsection is void.

4-A. Waivers for temporary employment. An employment agency, as defined in section 611, may request a written waiver for a temporary placement from an individual already in its employ or on a roster of eligibility as long as the client company has an approved substance ~~abuse~~ use testing policy and the individual has not been assigned work at the client company in the 30 days previous to the request. The waiver is only to allow a test that might not otherwise be allowed under this subchapter. The test must otherwise comply with the standards of this subchapter

and the employment agency's approved policy regarding applicant testing. The agency may not take adverse action against the individual for refusal to sign a waiver.

5. Right to obtain other samples. At the request of the employee or applicant at the time the test sample is taken, the employer shall, at that time:

A. Segregate a portion of the sample for that person's own testing. Within 5 days after notice of the test result is given to the employee or applicant, the employee or applicant shall notify the employer of the testing laboratory selected by the employee or applicant. This laboratory must comply with the requirements of this section related to testing laboratories. When the employer receives notice of the employee or applicant's selection, the employer shall promptly send the segregated portion of the sample to the named testing laboratory, subject to the same chain of custody requirements applicable to testing of the employer's portion of the sample. The employee or applicant shall pay the costs of these tests. Payment for these tests may not be required earlier than when notice of the choice of laboratory is given to the employer; and

B. In the case of an employee, have a blood sample taken from the employee by a licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Health and Human Services to draw blood samples. The employer shall have this sample tested for the presence of alcohol or marijuana metabolites, if those substances are to be tested for under the employer's written policy. If the employee requests that a blood sample be taken as provided in this paragraph, the employer may not test any other sample from the employee for the presence of these substances.

(1) The Department of Health and Human Services may identify, by rules adopted under section 687, other substances ~~of abuse~~ for which an employee may request a blood sample be tested instead of a urine sample if the department determines that a sufficient correlation exists between the presence of the substance in an individual's blood and its effect upon the individual's performance.

(2) ~~No~~ An employer may not require, request or suggest that any employee or applicant provide a blood sample for substance ~~abuse~~ use testing purposes nor may any employer conduct a substance ~~abuse~~ use test upon a blood sample except as provided in this paragraph.

(3) Applicants do not have the right to require the employer to test a blood sample as provided in this paragraph.

5-A. Point of collection screening test. Except as provided in this subsection, all provisions of this subchapter regulating screening tests apply to noninstrumented point of collection test devices described in section 682, subsection 7, paragraph A, subparagraph (1).

A. A noninstrumented point of collection test described in section 682, subsection 7, paragraph A, subparagraph (1) may be performed at the point of collection rather than in a laboratory. Subsections 6 and 7 and subsection 8, paragraphs A to C do not apply to such screening tests. Subsection 5 applies only to a sample that results in a positive test result.

B. Any sample that results in a negative test result must be destroyed. Any sample that results in a ~~positive~~ positive test result must be sent to a qualified testing laboratory consistent with subsections 6 to 8 for confirmation testing.

C. A person who performs a point of collection screening test or a confirmation test may release the results of that test only as follows.

(1) For a point of collection screening test that results in a preliminary positive or negative test result, the person performing the test shall release the test result to the employee who is the subject of the test immediately.

(2) For a point of collection screening test that results in a preliminary positive test result, the person performing the test may not release the test result to the employer until after the result of the confirmation test has been determined.

(3) For a point of collection screening test that results in a preliminary negative test result, the person performing the test may not release the test result to the employer until after the result of a confirmation test would have been determined if one had been performed.

(4) For a confirmation test, the person performing the test shall release the result immediately to the employee who is the subject of the test and to the employer.

6. Qualified testing laboratories required. ~~No~~ An employer may ~~not~~ perform any substance ~~abuse~~ use test administered to any of that employer's employees. An employer may perform screening tests administered to applicants if the employer's testing facilities comply with the requirements for testing laboratories under this subsection. Except as provided in subsection 5-A, any substance ~~abuse~~ use test admin-

istered under this subchapter must be performed in a qualified testing laboratory that complies with this subsection.

B. The laboratory must have written testing procedures and procedures to ensure a clear chain of custody.

C. The laboratory must demonstrate satisfactory performance in the proficiency testing program of the National Institute on Drug Abuse, the College of American Pathology or the American Association for Clinical Chemistry.

D. The laboratory must comply with rules adopted by the Department of Health and Human Services under section 687. These rules ~~shall~~ must ensure that:

(1) The laboratory possesses all licenses or certifications that the department finds necessary or desirable to ensure reliable and accurate test results;

(2) The laboratory follows proper quality control procedures, including, but not limited to:

(a) The use of internal quality controls during each substance ~~abuse~~ use test conducted under this subchapter, including the use of blind samples and samples of known concentrations ~~which~~ that are used to check the performance and calibration of testing equipment;

(b) The internal review and certification process for test results, including the qualifications of the person who performs that function in the testing laboratory; and

(c) Security measures implemented by the testing laboratory; and

(3) Other necessary and proper actions are taken to ensure reliable and accurate test results.

7. Testing procedure. A testing laboratory shall perform a screening test on each sample submitted by the employer for only those substances ~~of abuse~~ that the employer requests to be identified. If a screening test result is negative, no further test may be conducted on that sample. If a screening test result is positive, a confirmation test ~~shall~~ must be performed on that sample. A testing laboratory shall retain all confirmed positive samples for one year in a manner that will inhibit deterioration of the samples and allow subsequent retesting. All other samples ~~shall~~ must be disposed of immediately after testing.

8. Laboratory report of test results. This subsection governs the reporting of test results.

A. A laboratory report of test results ~~shall~~ must, at a minimum, state:

- (1) The name of the laboratory that performed the test or tests;
- (2) Any confirmed positive results on any tested sample.
 - (a) Unless the employee or applicant consents, test results ~~shall~~ may not be reported in numerical or quantitative form but ~~shall~~ must state only that the test result was positive or negative. This division does not apply if the test or the test results become the subject of any grievance procedure, administrative proceeding or civil action.
 - (b) A testing laboratory and the employer ~~must~~ shall ensure that an employee's unconfirmed positive screening test result cannot be determined by the employer in any manner, including, but not limited to, the method of billing the employer for the tests performed by the laboratory and the time within which results are provided to the employer. This division does not apply to test results for applicants;
- (3) The sensitivity or cutoff level of the confirmation test; and
- (4) Any available information concerning the margin of accuracy and precision of the test methods employed.

The report ~~shall~~ may not disclose the presence or absence of evidence of any physical or mental condition or of any substance other than the specific substances ~~of abuse~~ that the employer requested to be identified. A testing laboratory shall retain records of confirmed positive results in a numerical or quantitative form for at least 2 years.

B. The employer shall promptly notify the employee or applicant tested of the test result. Upon request of an employee or applicant, the employer shall promptly provide a legible copy of the laboratory report to the employee or applicant. Within 3 working days after notice of a confirmed positive test result, the employee or applicant may submit information to the employer explaining or contesting the results.

C. The testing laboratory shall send test reports for samples segregated at an employee's or applicant's request under subsection 5, paragraph A, to both the employer and the employee or applicant tested.

D. Every employer whose policy is approved by the Department of Labor under section 686 shall

annually send to the department a compilation of the results of all substance ~~abuse~~ use tests administered by that employer in the previous calendar year. This report ~~shall~~ must provide separate categories for employees and applicants and ~~shall~~ must be presented in statistical form so that no person who was tested by that employer can be identified from the report. The report ~~shall~~ must include a separate category for any tests conducted on a random or arbitrary basis under section 684, subsection 3.

9. Costs. The employer shall pay the costs of all substance ~~abuse~~ use tests ~~which that~~ the employer requires, requests or suggests that an employee or applicant submit. Except as provided in paragraph A, the employee or applicant shall pay the costs of any additional substance ~~abuse~~ use tests.

Costs of a substance ~~abuse~~ use test administered at the request of an employee under subsection 5, paragraph B, ~~shall~~ must be paid:

A. By the employer if the test results are negative for all substances ~~of abuse~~ tested for in the sample; and

B. By the employee if the test results in a confirmed positive result for any of the substances ~~of abuse~~ tested for in the sample.

10. Limitation on use of tests. An employer may administer substance ~~abuse~~ use tests to employees or applicants only for the purpose of discovering the use of any substance ~~of abuse~~ likely to cause impairment of the user or the use of any scheduled drug. ~~No~~ An employer may not have substance ~~abuse~~ use tests administered to an employee or applicant for the purpose of discovering any other information.

11. Rules. The Department of Health and Human Services shall adopt any rules under section 687 regulating substance ~~abuse~~ use testing procedures that it finds necessary or desirable to ensure accurate and reliable substance ~~abuse~~ use testing and to protect the privacy rights of employees and applicants.

Sec. A-108. 26 MRSA §684, as amended by PL 2003, c. 547, §2, is further amended to read:

§684. Imposition of tests

1. Testing of applicants. An employer may require, request or suggest that an applicant submit to a substance ~~abuse~~ use test only if:

A. The applicant has been offered employment with the employer; or

B. The applicant has been offered a position on a roster of eligibility from which applicants will be selected for employment. The number of persons on this roster of eligibility may not exceed the number of applicants hired by that employer in the preceding 6 months.

The offer of employment or offer of a position on a roster of eligibility may be conditioned on the applicant receiving a negative test result.

2. Probable cause testing of employees. An employer may require, request or suggest that an employee submit to a substance ~~abuse~~ use test if the employer has probable cause to test the employee.

A. The employee's immediate supervisor, other supervisory personnel, a licensed physician or nurse, or the employer's security personnel ~~shall~~ must make the determination of probable cause.

B. The supervisor or other person must state, in writing, the facts upon which ~~this~~ the determination made under paragraph A is based and provide a copy of the statement to the employee.

3. Random or arbitrary testing of employees. In addition to testing employees on a probable cause basis under subsection 2, an employer may require, request or suggest that an employee submit to a substance ~~abuse~~ use test on a random or arbitrary basis if:

A. The employer and the employee have bargained for provisions in a collective bargaining agreement, either before or after the effective date of this subchapter, that provide for random or arbitrary testing of employees. A random or arbitrary testing program that would result from implementation of an employer's last best offer is not considered a provision bargained for in a collective bargaining agreement for purposes of this section;

B. The employee works in a position the nature of which would create an unreasonable threat to the health or safety of the public or the employee's coworkers if the employee were under the influence of a substance ~~of abuse~~. It is the intent of the Legislature that the requirements of this paragraph be narrowly construed; or

C. The employer has established a random or arbitrary testing program under this paragraph that applies to all employees, except as provided in subparagraph (4), regardless of position.

(1) An employer may establish a testing program under this paragraph only if the employer has 50 or more employees who are not covered by a collective bargaining agreement.

(2) The written policy required by section 683, subsection 2 with respect to a testing program under this paragraph must be developed by a committee of at least 10 of the employer's employees. The employer shall appoint members to the committee from a cross-section of employees who are eligible to be tested. The committee must include a medical professional who is trained in procedures for testing for substances ~~of abuse~~. If no such

person is employed by the employer, the employer shall obtain the services of such a person to serve as a member of the committee created under this subparagraph.

(3) The written policy developed under subparagraph (2) must also require that selection of employees for testing be performed by a person or entity not subject to the employer's influence, such as a medical review officer. Selection must be made from a list, provided by the employer, of all employees subject to testing under this paragraph. The list may not contain information that would identify the employee to the person or entity making the selection.

(4) Employees who are covered by a collective bargaining agreement are not included in testing programs pursuant to this paragraph unless they agree to be included pursuant to a collective bargaining agreement as described under paragraph A.

(5) Before initiating a testing program under this paragraph, the employer ~~must~~ shall obtain from the Department of Labor approval of the policy developed by the employee committee, as required in section 686. If the employer does not approve of the written policy developed by the employee committee, the employer may decide not to submit the policy to the department and not to establish the testing program. The employer may not change the written policy without approval of the employee committee.

(6) The employer may not discharge, suspend, demote, discipline or otherwise discriminate with regard to compensation or working conditions against an employee for participating or refusing to participate in an employee committee created pursuant to this paragraph.

4. Testing while undergoing rehabilitation or treatment. While the employee is participating in a substance ~~abuse~~ use rehabilitation program either as a result of voluntary contact with or mandatory referral to the employer's employee assistance program or after a confirmed positive result as provided in section 685, subsection 2, paragraphs B and C, substance ~~abuse~~ use testing may be conducted by the rehabilitation or treatment provider as required, requested or suggested by that provider.

A. Substance ~~abuse~~ use testing conducted as part of such a rehabilitation or treatment program is not subject to the provisions of this subchapter regulating substance ~~abuse~~ use testing.

B. An employer may not require, request or suggest that any substance ~~abuse~~ use test be adminis-

tered to any employee while the employee is undergoing such rehabilitation or treatment, except as provided in subsections 2 and 3.

C. The results of any substance ~~abuse~~ use test administered to an employee as part of such a rehabilitation or treatment program may not be released to the employer.

5. Testing upon return to work. If an employee who has received a confirmed positive result returns to work with the same employer, whether or not the employee has participated in a rehabilitation program under section 685, subsection 2, the employer may require, request or suggest that the employee submit to a subsequent substance ~~abuse~~ use test anytime between 90 days and one year after the date of the employee's prior test. A test may be administered under this subsection in addition to any tests conducted under subsections 2 and 3. An employer may require, request or suggest that an employee submit to a substance ~~abuse~~ use test during the first 90 days after the date of the employee's prior test only as provided in subsections 2 and 3.

Sec. A-109. 26 MRSA §685, as amended by PL 2003, c. 547, §3, is further amended to read:

§685. Action taken on substance use tests

Action taken by an employer on the basis of a substance ~~abuse~~ use test is limited as provided in this section.

1. Before receipt of test results. An employer may suspend an employee with full pay and benefits or may transfer the employee to another position with no reduction in pay or benefits while awaiting an employee's test results.

2. Use of confirmation test results. This subsection governs an employer's use of confirmed positive results and an employee's or applicant's refusal to submit to a test requested or required by an employer in compliance with this subchapter.

A. Subject to any limitation of the Maine Human Rights Act or any other state law or federal law, an employer may use a confirmed positive result or refusal to submit to a test as a factor in any of the following decisions:

- (1) Refusal to hire an applicant for employment or refusal to place an applicant on a roster of eligibility;
- (2) Discharge of an employee;
- (3) Discipline of an employee; or
- (4) Change in the employee's work assignment.

A-1. An employer who tests a person as an applicant and employs that person prior to receiving the test result may take no action on a positive re-

sult except in accordance with the employee provisions of the employer's approved policy.

B. Before taking any action described in paragraph A in the case of an employee who receives an initial confirmed positive result, an employer shall provide the employee with an opportunity to participate for up to 6 months in a rehabilitation program designed to enable the employee to avoid future use of a substance ~~of abuse~~ and to participate in an employee assistance program, if the employer has such a program. The employer may take any action described in paragraph A if the employee receives a subsequent confirmed positive result from a test administered by the employer under this subchapter.

C. If the employee chooses not to participate in a rehabilitation program under this subsection, the employer may take any action described in paragraph A. If the employee chooses to participate in a rehabilitation program, the following provisions apply.

(1) If the employer has an employee assistance program that offers counseling or rehabilitation services, the employee may choose to enter that program at the employer's expense. If these services are not available from an employer's employee assistance program or if the employee chooses not to participate in that program, the employee may enter a public or private rehabilitation program.

(a) Except to the extent that costs are covered by a group health insurance plan, the costs of the public or private rehabilitation program must be equally divided between the employer and employee if the employer has more than 20 full-time employees. This requirement does not apply to municipalities or other political subdivisions of the State or to any employer when the employee is tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. If necessary, the employer shall assist in financing the cost share of the employee through a payroll deduction plan.

(b) Except to the extent that costs are covered by a group health insurance plan, an employer with 20 or fewer full-time employees, a municipality or other political subdivision of the State is not required to pay for any costs of rehabilitation or treatment under any public or private rehabilitation program. An em-

ployer is not required to pay for the costs of rehabilitation if the employee was tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V.

(2) ~~No~~ An employer may not take any action described in paragraph A while an employee is participating in a rehabilitation program, except as provided in subparagraph (2-A) and except that an employer may change the employee's work assignment or suspend the employee from active duty to reduce any possible safety hazard. Except as provided in subparagraph (2-A), an employee's pay or benefits may not be reduced while an employee is participating in a rehabilitation program, provided that the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation or while the employee is medically disqualified. The employee may apply normal sick leave and vacation time, if any, for these periods.

(2-A) A rehabilitation or treatment provider shall promptly notify the employer if the employee fails to comply with the prescribed rehabilitation program before the expiration of the 6-month period provided in paragraph B. Upon receipt of this notice, the employer may take any action described in paragraph A.

(3) Except as provided in divisions (a) and (b), upon successfully completing the rehabilitation program, as determined by the rehabilitation or treatment provider after consultation with the employer, the employee is entitled to return to the employee's previous job with full pay and benefits unless conditions unrelated to the employee's previous confirmed positive result make the employee's return impossible. Reinstatement of the employee ~~must~~ may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part. If the rehabilitation or treatment provider determines that the employee has not successfully completed the rehabilitation program within 6 months after starting the program, the employer may take any action described in paragraph A.

(a) If the employee who has completed rehabilitation previously worked in an employment position subject to random or arbitrary testing under an employer's

written policy, the employer may refuse to allow the employee to return to the previous job if the employer believes that the employee may pose an unreasonable safety hazard because of the nature of the position. The employer shall attempt to find suitable work for the employee immediately after refusing the employee's return to the previous position. ~~No~~ A reduction may not be made in the employee's previous benefits or rate of pay while the employee is awaiting reassignment to work or ~~while~~ working in a position other than the previous job. The employee ~~shall~~ must be reinstated to the previous position or to another position with an equivalent rate of pay and benefits and with no loss of seniority within 6 months after returning to work in any capacity with the employer unless the employee has received a subsequent confirmed positive result within that time from a test administered under this subchapter or unless conditions unrelated to the employee's previous confirmed positive test result make that reinstatement or reassignment impossible. Placement of the employee in suitable work and reinstatement may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part.

(b) Notwithstanding division (a), if an employee who has successfully completed rehabilitation is medically disqualified, the employer is not required to reinstate the employee or find suitable work for the employee during the period of disqualification. The employer is not required to compensate the employee during the period of disqualification. Immediately after the employee's medical disqualification ceases, the employer's obligations under division (a) attach as if the employee had successfully completed rehabilitation on that date.

D. This subsection does not require an employer to take any disciplinary action against an employee who refuses to submit to a test, receives a single or repeated confirmed positive result or does not choose to participate in a rehabilitation program. This subsection is intended to set minimum opportunities for an employee with a substance ~~abuse~~ use problem to address the problem through rehabilitation. An employer may offer

additional opportunities, not otherwise in violation of this subchapter, for rehabilitation or continued employment without rehabilitation.

3. Confidentiality. This subsection governs the use of information acquired by an employer in the testing process.

A. Unless the employee or applicant consents, all information acquired by an employer in the testing process is confidential and may not be released to any person other than the employee or applicant who is tested, any necessary personnel of the employer and a provider of rehabilitation or treatment services under subsection 2, paragraph C. This paragraph does not prevent:

- (1) The release of this information when required or permitted by state or federal law, including release under section 683, subsection 8, paragraph D; or
- (2) The use of this information in any grievance procedure, administrative hearing or civil action relating to the imposition of the test or the use of test results.

B. Notwithstanding any other law, the results of any substance ~~abuse~~ use test required, requested or suggested by any employer may not be used in any criminal proceeding.

Sec. A-110. 26 MRSA §686, sub-§1, ¶C, as enacted by PL 2009, c. 133, §3, is amended to read:

C. The department shall allow for the use of any federally recognized substance ~~abuse~~ use test.

Sec. A-111. 26 MRSA §688, as amended by PL 2011, c. 657, Pt. AA, §74, is further amended to read:

§688. Substance use education

All employers shall cooperate fully with the Department of Labor, the Department of Health and Human Services, the Department of Public Safety and any other state agency in programs designed to educate employees about the dangers of substance ~~abuse~~ use and about public and private services available to employees who have a substance ~~abuse-problem~~ use disorder.

Sec. A-112. 26 MRSA §689, sub-§3, as enacted by PL 1989, c. 536, §§1 and 2 and affected by c. 604, §§2 and 3, is amended to read:

3. Harassment. In addition to the liability imposed under subsection 1, any employer who requires or repeatedly attempts to require an employee or applicant to submit to a substance ~~abuse~~ use test under conditions that would not justify the test under this subchapter or who without substantial justification repeatedly requires an employee to submit to a substance ~~abuse~~ use test under section 684, subsection 3:

A. Is subject to a civil penalty not to exceed \$1,000, payable to the affected employee, to be recovered in a civil action; and

B. For any subsequent offense against the same employee, is subject to a civil penalty of \$2,000, payable to the affected employee, to be recovered in a civil action.

Sec. A-113. 26 MRSA §690, as enacted by PL 1989, c. 536, §§1 and 2 and affected by c. 604, §§2 and 3, is further amended to read:

§690. Report

The Department of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on March 1, 1990, and annually on that date thereafter. This report shall:

1. List of employers. List those employers whose substance ~~abuse~~ use testing policies have been approved by the Department of Labor under section 686;

2. Persons tested. Indicate whether those employers are testing applicants or employees, or both;

3. Random or arbitrary testing. Indicate those employers whose substance ~~abuse~~ use testing policies permit random or arbitrary testing under section 684, subsection 3, and describe the employment positions subject to such random or arbitrary testing;

4. Results. Provide statistical data relating to the reports received from employers indicating the number of substance ~~abuse~~ use tests administered by those employers in the previous calendar year and the results of those tests; and

5. Description. Briefly describe the general scope and practice of workplace substance ~~abuse~~ use testing in the State.

Sec. A-114. 28-A MRSA §1652, sub-§5, as enacted by PL 2013, c. 368, Pt. XXXX, §8 and affected by §13, is amended to read:

5. Appropriation for substance use disorder prevention and treatment. Notwithstanding any provision of law to the contrary, the amount of funds appropriated from the General Fund to the Department of Health and Human Services for substance ~~abuse~~ use disorder prevention and treatment may not be less than an amount equal to 31% of the excise tax collected or received by the bureau under this section.

Sec. A-115. 28-A MRSA §1703, sub-§5, as amended by PL 2013, c. 368, Pt. V, §61 and Pt. XXXX, §12 and affected by Pt. XXXX, §13, is further amended to read:

5. Appropriation. The amount of funds appropriated from the General Fund to the Department of Health and Human Services for substance ~~abuse~~ use disorder prevention and treatment may not be less than

the dollar amount collected or received by the bureau under this section.

Sec. A-116. 28-A MRSA §2519, sub-§3, ¶B, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

B. The course provides instruction and the development of skills in the following subject matters:

- (1) Identification of intoxicated individuals and minors;
- (2) Intervention to prevent excessive consumption of alcohol by such methods as serving food and encouraging the consumption of nonalcoholic beverages;
- (3) Making consumers aware of their condition and their responsibility for driving in an intoxicated condition and providing alternate transportation when available;
- (4) Knowledge of state laws relating to the sale and distribution of alcohol and the legal responsibilities of servers and consumers;
- (5) Knowledge of the effect of alcohol by volume and timing of intake in relation to an individual's weight;
- (6) Examination of proof of age identification and methods of detecting false or altered age identification documents;
- (7) Policies and practices to prevent the sale or service of alcohol to minors and visibly intoxicated individuals; and
- (8) The effects of alcohol on the human body, including the disease concept of ~~alcoholism~~ substance use disorder.

Sec. A-117. 29-A MRSA §2455, sub-§3, as amended by PL 2011, c. 657, Pt. AA, §79, is further amended to read:

3. Substance use disorder programs. Upon receipt of the report required in subsection 1, the Secretary of State shall require that the following conditions be met before that person may be licensed or permitted to operate a motor vehicle:

- A. Satisfactory completion of the Driver Education and Evaluation Programs of the Department of Health and Human Services;
- B. When required, satisfactory completion of a substance ~~abuse~~ use disorder treatment program or rehabilitation program approved or licensed by the Department of Health and Human Services; and
- C. When required, attendance at an after-care program arranged by the approved treatment or rehabilitation program.

Sec. A-118. 30-A MRSA §1556, sub-§1, as amended by PL 2001, c. 659, Pt. F, §1, is further amended to read:

1. Furlough authorized. The sheriff may establish rules for and permit a prisoner under the final sentence of a court a furlough from the county jail in which the prisoner is confined. Furlough may be granted for not more than 3 days at one time in order to permit the prisoner to visit a dying relative, to obtain medical services or for any other reason consistent with the rehabilitation of an inmate or prisoner that is consistent with the laws or rules of the sheriff's department. Furlough may be granted for a period longer than 3 days if required to provide treatment for a physical or mental condition of the prisoner, including a substance ~~abuse condition~~ use disorder, as determined by a qualified licensed professional.

Sec. A-119. 30-A MRSA §1659-A, sub-§3, ¶E, as enacted by PL 2009, c. 391, §6, is amended to read:

E. The inmate may not use alcohol or illegal drugs or other illegal substances and ~~may not abuse alcohol~~ or ~~abuse~~ misuse any other legal substance.

Sec. A-120. 30-A MRSA §4349-A, sub-§1, ¶C, as repealed and replaced by PL 2013, c. 424, Pt. B, §10, is amended to read:

C. Areas other than those described in paragraph A or B for the following projects:

- (1) A project related to a commercial or industrial activity that, due to its operational or physical characteristics, typically is located away from other development, such as an activity that relies on a particular natural resource for its operation;
- (2) An airport, port or railroad or industry that must be proximate to an airport, a port or a railroad line or terminal;
- (3) A pollution control facility;
- (4) A project that maintains, expands or promotes a tourist or cultural facility that is required to be proximate to a specific historic, natural or cultural resource or a building or improvement that is related to and required to be proximate to land acquired for a park, conservation, open space or public access or to an agricultural, conservation or historic easement;
- (5) A project located in a municipality that has none of the geographic areas described in paragraph A or B and that prior to January 1, 2000 formally requested but had not received from the former State Planning Office funds to assist with the preparation of a comprehen-

sive plan or that received funds from the department to assist with the preparation of a comprehensive plan within the previous 2 years. This exception expires for a municipality 2 years after such funds are received; or

(6) A housing project serving the following: individuals with mental illness, developmental disabilities, physical disabilities, brain injuries, substance ~~abuse problems~~ use disorder or a human immunodeficiency virus; homeless individuals; victims of domestic violence; foster children; or children or adults in the custody of the State. A nursing home is not considered a housing project under this paragraph.

Sec. A-121. 30-A MRSA §5002, sub-§6, ¶B, as enacted by PL 1989, c. 601, Pt. B, §4, is amended to read:

B. A person or family that has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including, but not limited to, welfare hotels, congregate shelters and transitional housing for persons with mental illness or substance ~~abuse problems~~ use disorder;

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Sec. A-122. 32 MRSA §64-B, sub-§1, as enacted by PL 2007, c. 402, Pt. E, §4, is amended to read:

1. Habitual substance use. Habitual substance ~~abuse~~ use that has resulted or is foreseeably likely to result in the licensee performing assigned services in a manner that endangers the health or safety of patients;

Sec. A-123. 32 MRSA §90-A, sub-§5, ¶B-3, as enacted by PL 2007, c. 274, §25, is amended to read:

B-3. Any condition or impairment within the preceding 3 years, including, but not limited to, substance ~~abuse, alcohol abuse~~ use disorder or a mental, emotional or nervous disorder or condition, that in any way affects, or if untreated could impair, the licensee's ability to provide emergency medical services or emergency medical dispatch services;

Sec. A-124. 32 MRSA §503-B, sub-§1, as enacted by PL 2007, c. 402, Pt. H, §7, is amended to read:

1. Habitual substance use. Habitual substance ~~abuse~~ use that has resulted or is foreseeably likely to result in the applicant or licensee performing services in a manner that endangers the health or safety of patients;

Sec. A-125. 32 MRSA §2212, as enacted by PL 2017, c. 305, §1, is amended to read:

§2212. Dispensing opioid medication to patients in opioid treatment programs

A registered professional nurse and a certified nurse practitioner may dispense opioid medication for substance ~~abuse~~ use disorder treatment purposes to patients within an opioid treatment program under the direction of the medical director of the opioid treatment program.

Sec. A-126. 32 MRSA §2258-B, as enacted by PL 2017, c. 305, §2, is amended to read:

§2258-B. Dispensing opioid medication to patients in opioid treatment programs

A licensed practical nurse may dispense opioid medication for substance ~~abuse~~ use disorder treatment purposes to patients within an opioid treatment program under the direction of the medical director of the opioid treatment program.

Sec. A-127. 32 MRSA §2431-A, sub-§2, ¶B, as amended by PL 1993, c. 600, Pt. A, §160, is further amended to read:

B. Habitual substance ~~abuse~~ use that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients;

Sec. A-128. 32 MRSA §3292, as amended by PL 1999, c. 90, §4, is further amended to read:

§3292. Treatment of minors

An individual licensed under this chapter who renders medical care to a minor for treatment of venereal disease or ~~abuse of drugs or alcohol~~ substance use or for the collection of sexual assault evidence through a sexual assault forensic examination is under no obligation to obtain the consent of the minor's parent or guardian or to inform the parent or guardian of the treatment. This section may not be construed to prohibit the licensed individual rendering the treatment from informing the parent or guardian. For purposes of this section, "~~abuse of drugs or alcohol~~ substance use" means the use of drugs or alcohol solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment.

Sec. A-129. 32 MRSA §3817, as amended by PL 1979, c. 96, §4, is further amended to read:

§3817. Services to minors for substance use

Any person licensed under this chapter who renders psychological services to a minor for problems associated with ~~the abuse of drugs or alcohol~~ substance use is under no obligation to obtain the consent of ~~said~~ the minor's parent or guardian or to inform ~~such~~ the parent or guardian of such services. Nothing in this section ~~shall~~ may be construed so as to prohibit the licensed person rendering such services from informing ~~such~~ the parent or guardian. For purposes of this section, "~~abuse of drugs~~ substance use" means the use of drugs or alcohol solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment.

Sec. A-130. 32 MRSA §3837-A, sub-§1, ¶B, as enacted by PL 2007, c. 402, Pt. Q, §14, is amended to read:

B. Habitual substance ~~abuse~~ use that has resulted or is ~~foreseeably~~ foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients;

Sec. A-131. 32 MRSA §6202, as amended by PL 1995, c. 394, §3, is further amended to read:

§6202. Objective

The objective of this legislation is to establish a State Board of Alcohol and Drug Counselors, ~~which that~~ which establishes and ensures high professional standards among alcohol and drug counselors and ~~which that~~ which encourages and promotes quality treatment and rehabilitation services for substance ~~abusers~~ users.

Sec. A-132. 32 MRSA §6203-A, sub-§1, as enacted by PL 2007, c. 402, Pt. U, §2, is amended to read:

1. Agency. "Agency" means an establishment, organization or institution, public or private, that is licensed by the Department of Health and Human Services and that offers, purports to offer, maintains or operates one or more programs for the assessment, diagnosis, care, treatment or rehabilitation of individuals who are suffering physically, emotionally or psychologically from ~~the abuse of alcohol or other drugs~~ substance use disorder.

Sec. A-133. 32 MRSA §6203-A, sub-§3, as amended by PL 2011, c. 222, §1, is further amended to read:

3. Alcohol and drug counseling services. "Alcohol and drug counseling services" are those counseling services offered for a fee, monetary or otherwise, as part of the treatment and rehabilitation of persons ~~abusing~~ using alcohol or other drugs. The purpose of alcohol and drug counseling services is to help individuals, families and groups confront and resolve

problems caused by the ~~abuse~~ use of alcohol or other drugs. Alcohol and drug counseling services are the 12 core functions defined by rule of the board. "Alcohol and drug counseling services" includes nicotine addiction counseling and treatment services.

Sec. A-134. 32 MRSA §6203-A, sub-§7, as enacted by PL 2007, c. 402, Pt. U, §2, is amended to read:

7. Consumer of alcohol and drug counseling services. "Consumer of alcohol and drug counseling services" means a person affected by or recovering from ~~alcoholism or other drug abuse~~ substance use disorder.

Sec. A-135. 32 MRSA §6206, sub-§1, as enacted by PL 1991, c. 456, §11, is amended to read:

1. Peer groups; self-help. Nothing in this chapter may prevent any person from engaging in or offering substance ~~abuse~~ use disorder services such as self-help, sponsorship through alcoholics or narcotics anonymous groups or other uncompensated substance ~~abuse~~ use disorder assistance.

Sec. A-136. 32 MRSA §6206, sub-§4, as enacted by PL 1991, c. 456, §11, is amended to read:

4. Interns. Nothing in this chapter may be construed to apply to the activities and services of a student, intern or trainee in substance ~~abuse~~ use counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution, if these activities are performed under supervision and constitute a part of the supervised course of study.

Sec. A-137. 32 MRSA §6206, sub-§5, as amended by PL 1993, c. 635, §1, is further amended to read:

5. Other licensed professionals. Nothing in this chapter may prevent any other licensed person in the field of medicine, psychology, nursing, social work or professional counseling who is qualified to provide substance ~~abuse~~ use counseling services by virtue of the requirements for that profession from engaging in or offering substance ~~abuse~~ use counseling services if such a person does not profess to be providing the service of a substance ~~abuse~~ use counselor as the sole professional service rendered by that person. These professionals may not be required to obtain additional certification in order to provide substance ~~abuse~~ use counseling services as permitted by this subsection.

Sec. A-138. 32 MRSA §6217-B, sub-§1, as amended by PL 2007, c. 621, §9, is further amended to read:

1. Active use. Active ~~abuse~~ use of alcohol or any other drug that in the judgment of the board is detrimental to the performance or competency of a licensee of the board; or

Sec. A-139. 32 MRSA §6221, as amended by PL 1991, c. 509, §28, is further amended to read:

§6221. Treatment of minors

Any person licensed under this chapter who renders counseling services to a minor for the treatment of problems associated with ~~the abuse of drugs or alcohol~~ substance use is under no obligation to obtain the consent of that minor's parent or guardian or to inform that parent or guardian of that treatment. Nothing in this section may be construed so as to prohibit the licensed person rendering that treatment from informing that parent or guardian. For the purposes of this section, "~~abuse of drugs~~ substance use" means the use of drugs or alcohol solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment.

Sec. A-140. 32 MRSA §7004, as amended by PL 2007, c. 402, Pt. V, §3, is further amended to read:

§7004. Services to minors for substance use

Any person licensed under this chapter who renders social work services to a minor for problems associated with ~~the abuse of drugs or alcohol~~ substance use is under no obligation to obtain the consent of that minor's parent or guardian or to inform that parent or guardian of the treatment. Nothing in this section may be construed so as to prohibit the licensed person rendering this treatment from informing that parent or guardian. For purposes of this section, "~~abuse of drugs~~ substance use" means the use of drugs or alcohol solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment.

Sec. A-141. 32 MRSA §9403, sub-§§3-B and 3-C, as enacted by PL 1987, c. 170, §2, are amended to read:

3-B. Drug user. "Drug ~~abuser~~ user" means a person who uses any dangerous substance in violation of any law of the State.

3-C. Person with substance use disorder. "~~Drug addict~~ Person with substance use disorder" means a drug-dependent person who due to the use of a dangerous substance has developed such a tolerance to the substance that abrupt termination of the use of the substance would produce withdrawal symptoms.

Sec. A-142. 32 MRSA §9405, sub-§1-A, ¶F, as enacted by PL 1987, c. 170, §8, is amended to read:

F. Submits an application which contains the following, to be answered by the applicant:

- (1) Full name;

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

- (3) The date and place of birth, height, weight and color of eyes;

- (4) A record of previous issuances of, refusals to issue and renew, suspensions and revocations of a license to be a contract security company. The record of previous refusals to issue alone does not constitute cause for refusal and the record of previous refusals to renew and revocations alone constitutes cause for refusal only as provided in section 9411-A;

- (5) The following questions.

- (a) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a crime which is punishable by one year or more imprisonment or for any other crime alleged to have been committed by you with the use of a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, or of a firearm against another person?

- (b) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense which involves conduct which, if committed by an adult, would be punishable by one year or more of imprisonment or for any other juvenile offense alleged to have been committed by you with the use of a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, or of a firearm against another person?

- (c) Have you ever been convicted of a crime described in division (a) or adjudicated as having committed a juvenile offense as described in division (b)?

- (d) Is there a formal charging instrument now pending against you in this jurisdiction for any crime enumerated in section 9412?

- (e) Is there a formal charging instrument now pending against you in this jurisdiction for a juvenile offense which involves conduct which, if committed by an adult, would be a crime enumerated in section 9412?

- (f) Have you within the past 5 years been convicted of a crime described in division (d) or adjudicated as having committed a juvenile offense as described in division (e)?

- (g) Are you a fugitive from justice?

(h) Are you a drug ~~abuser, drug addict or drug dependent person user or a person with substance use disorder?~~

(i) Do you have a mental disorder which causes you to be potentially dangerous to yourself or others?

(j) Have you been adjudicated to be an incapacitated person pursuant to Title 18-A, article V, Parts 3 and 4, and not had that designation removed by an order under Title 18-A, section 5-307, subsection (b)?

(k) Have you been dishonorably discharged from the military forces within the past 5 years?

(l) Are you an illegal alien?;

(6) A list of employees as of the date the applicant signs the application who will perform security guard functions within the State. This list shall identify each employee by his full name, full current address and addresses for the prior 5 years and his date and place of birth, height, weight and color of eyes. For each employee on this list who will perform security guard functions at the site of a labor dispute or strike, the applicant shall have previously investigated the background of the employee to ensure that the employee meets all of the requirements to be a security guard as contained in section 9410-A, subsection 1. If the employee meets all of the requirements to be a security guard, the applicant shall also submit a statement, signed by the applicant, stating that the applicant has conducted this background investigation and that the employee meets the requirements contained in section 9410-A, subsection 1; and

(7) A photograph of the applicant taken within 6 months of the date the applicant affixes his signature to the application; and

Sec. A-143. 32 MRSA §9410-A, sub-§1, ¶H, as enacted by PL 1987, c. 170, §12, is amended to read:

H. Is not a drug ~~abuser, drug addict or drug dependent person user or a person with substance use disorder;~~

Sec. A-144. 32 MRSA §9860-A, sub-§1, as enacted by PL 2007, c. 402, Pt. X, §6, is amended to read:

1. Substance use. Habitual substance ~~abuse use~~ or ~~abuse use~~ of ~~other~~ drugs listed as controlled substances by the ~~drug enforcement administration~~ federal Drug Enforcement Administration that has resulted or is foreseeably likely to result in the licensee perform-

ing services in a manner that endangers the health or safety of patients; or

Sec. A-145. 32 MRSA §13721, sub-§1, ¶D, as enacted by PL 1987, c. 710, §5, is amended to read:

D. The inspection during business hours of all pharmacies, dispensaries, stores, hospital pharmacies, extended care facilities, boarding homes, nursing homes, ~~drug abuse~~ substance use disorder treatment centers, penal institutions, family planning centers or other drug outlets in which drugs or medicines are manufactured, stored, distributed, compounded, dispensed or retailed in this State;

Sec. A-146. 32 MRSA §13856, sub-§1, as amended by PL 1989, c. 895, §9, is further amended to read:

1. Other professionals. Nothing in this chapter may be construed to apply to the activities and services of members of other professions licensed, certified or registered by the State such as, but not limited to, psychiatrists, physicians, psychologists, registered nurses, social workers and substance ~~abuse use disorder~~ counselors performing counseling consistent with the laws of the State governing their practices.

Sec. A-147. 32 MRSA §13861-A, sub-§1, ¶A, as enacted by PL 2007, c. 402, Pt. EE, §9, is amended to read:

A. Habitual substance ~~abuse use~~ or ~~abuse use~~ of ~~other~~ drugs listed as controlled substances by the federal Drug Enforcement Administration that has resulted or is foreseeably likely to result in the applicant's or licensee's performing services in a manner that endangers the health or safety of patients;

Sec. A-148. 32 MRSA §14308-A, sub-§1, as enacted by PL 2007, c. 402, Pt. II, §9, is amended to read:

1. Habitual substance use. Habitual substance ~~abuse use~~ that has resulted or is ~~foreseeably~~ foreseeably likely to result in the applicant's or licensee's performing services in a manner that endangers the health or safety of clients;

Sec. A-149. 32 MRSA §18393, sub-§2, as enacted by PL 2015, c. 429, §21, is amended to read:

2. General rule of privilege. A patient has a privilege to refuse to disclose and to prevent another person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional conditions, including ~~alcohol or drug addiction~~ substance use disorder, among the patient, the patient's dentist and persons who are participating in the diagnosis or treatment under the direction of the dentist, including members of the patient's family.

Sec. A-150. 34-A MRSA §1206, sub-§1, ¶D, as amended by PL 2011, c. 542, Pt. A, §58, is further amended to read:

D. "Human service" means any alcoholism, children's community action, corrections, criminal justice, developmental disability, donated food, education, elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal, medical care, mental health, adult developmental, poverty, public assistance, rehabilitation, social, substance ~~abuse~~ use disorder, transportation, welfare or youth service operated by a community agency under an agreement financially supporting the service, wholly or in part, by funds authorized for expenditure for the department.

Sec. A-151. 34-A MRSA §1206-A, sub-§1, ¶B, as enacted by PL 2009, c. 92, §1, is amended to read:

B. "Community intervention program" means a program operated at the community level providing services designed to intervene in the risk factors for reoffending, including, but not limited to, mental health, sex offender treatment, social service and substance ~~abuse~~ use disorder treatment programs, but not including a batterers' intervention program under Title 19-A, section 4014.

Sec. A-152. 34-A MRSA §1208-B, sub-§1, ¶A, as enacted by PL 2015, c. 335, §22, is amended to read:

A. The standards, policies and procedures must address record keeping and reporting of financial data, capital improvement planning, jail staffing, administration and management of prisoners, transfer of inmates, notification to prisoners of prohibition on contact with victims and other persons, pretrial assessments and services, evidence-based programming, literacy programs, mental health and substance ~~abuse~~ use disorder programs and correctional officer training.

Sec. A-153. 34-A MRSA §1214, sub-§5, as enacted by PL 2001, c. 686, Pt. D, §1, is amended to read:

5. Report regarding batterers intervention programs. Beginning January 2003 and annually thereafter, the department shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the work of batterers intervention programs. The report must include information regarding: meeting program benchmarks and goals, developing and implementing new programs, measuring effectiveness of existing programs and communicating and coordinating efforts with providers of substance ~~abuse~~ use disorder services, literacy support and other services with whom batterers may need to work in order to participate meaningfully in a batterers intervention program.

Sec. A-154. 34-A MRSA §3036-A, sub-§3, ¶F, as enacted by PL 1991, c. 845, §4, is amended to read:

F. The prisoner may not possess or use illegal drugs or other illegal substances, may not possess or use alcohol and may not ~~abuse~~ misuse any other legal substance.

Sec. A-155. 34-A MRSA §7002, sub-§2, ¶A, as corrected by RR 2003, c. 2, §100, is amended to read:

A. Constitute an interdepartmental coordinating committee on primary prevention, which must be chaired by the commissioner or the commissioner's designee and must include representation from the Department of Education, Department of Health and Human Services, Department of Labor, Department of Public Safety, the Juvenile Justice Advisory Group and such other public or private agencies as the commissioner may wish to nominate that have responsibilities associated with preventing not only delinquency, but also child abuse, substance ~~abuse~~ use disorder, running away from home, truancy and failing to complete school and other destructive behavior that affects juveniles. This coordinating committee shall:

(1) Develop a state primary prevention plan that provides for the use of state resources in ways that will strengthen the commitment of local communities to altering conditions that contribute to delinquency and other destructive behaviors that affect juveniles, so that the burden of state-funded treatment and crisis-responsive service programs will be reduced. The plan must provide for the coordination and consolidation of the primary prevention planning efforts of each of the state agencies specified in this section. The plan must set forth quantifiable and time-limited goals, objectives and strategies and must include proposals to integrate and build upon successful primary prevention programs;

(2) Provide for the evaluation of policies and programs developed and implemented pursuant to the plan; and

(3) Prepare, annually by November 1st, an appraisal of the State's primary prevention activities during the previous year and its recommendations for programs and activities relating to primary prevention.

Sec. A-156. 34-B MRSA §1208, sub-§1, ¶D, as amended by PL 2011, c. 542, Pt. A, §62, is further amended to read:

D. "Human service" means any ~~alcoholism~~, children's community action, corrections, criminal justice, developmental disability, donated food,

education, elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal, medical care, mental health, child and adult developmental, poverty, public assistance, rehabilitation, social, substance ~~abuse~~ use disorder, transportation, welfare or youth service operated by a community agency under an agreement financially supporting the service, wholly or in part, by funds authorized for expenditure by the department.

Sec. A-157. 34-B MRSA §1221, first ¶, as amended by PL 2007, c. 286, §4, is further amended to read:

The regional housing coordinator for each region shall convene a working group annually to develop a plan that states how mental health or substance ~~abuse~~ use disorder services needed by individuals using homeless shelters will be provided. Each working group shall submit a plan annually to the community service network established pursuant to section 3608. The community service network shall review the plan and submit it, with any suggested changes, to the Statewide Homeless Council, established pursuant to Title 30-A, section 5046.

Sec. A-158. 34-B MRSA §1221, sub-§1, ¶C, as enacted by PL 1997, c. 643, Pt. XX, §4, is amended to read:

C. Representatives of providers of substance ~~abuse~~ use disorder services designated by the department;

Sec. A-159. 34-B MRSA §3801, sub-§11, as enacted by PL 2005, c. 519, Pt. BBBB, §3 and affected by §20, is amended to read:

11. Assertive community treatment. "Assertive community treatment" or "ACT" means a self-contained service with a fixed point of responsibility for providing treatment, rehabilitation and support services to persons with mental illness for whom other community-based treatment approaches have been unsuccessful. Assertive community treatment uses clinical and rehabilitative staff to address symptom stability; relapse prevention; maintenance of safe, affordable housing in normative settings that promote well-being; establishment of natural support networks to combat isolation and withdrawal; the minimizing of involvement with the criminal justice system; individual recovery education; and services to enable the person to function at a work site. Assertive community treatment is provided by multidisciplinary teams who are on duty 24 hours per day, 7 days per week; teams must include a psychiatrist, registered nurse, certified rehabilitation counselor or certified employment specialist, a peer recovery specialist and a substance ~~abuse~~ use disorder counselor and may include an occupational therapist, community-based mental health rehabilitation technician, psychologist, licensed clinical

social worker or licensed clinical professional counselor. An ACT team member who is a state employee is, while in good faith performing a function as a member of an ACT team, performing a discretionary function within the meaning of Title 14, section 8104-B, subsection 3.

Sec. A-160. 36 MRSA §1760, sub-§28, as amended by PL 2011, c. 542, Pt. A, §135, is further amended to read:

28. Community mental health facilities, community adult developmental services facilities and community substance use disorder facilities. Sales to mental health facilities, adult developmental services facilities or substance ~~abuse~~ use disorder facilities that are:

A. Contractors under or receiving support under the Federal Community Mental Health Centers Act, or its successors; or

B. Receiving support from the Department of Health and Human Services pursuant to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204.

Sec. A-161. 36 MRSA §2557, sub-§6, as amended by PL 2011, c. 542, Pt. A, §140, is further amended to read:

6. Community mental health facilities, community adult developmental services facilities and community substance use disorder facilities. Sales to mental health facilities, adult developmental services facilities or substance ~~abuse~~ use disorder facilities that are:

A. Contractors under or receiving support under the federal Community Mental Health Centers Act, or its successors; or

B. Receiving support from the Department of Health and Human Services pursuant to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204;

Sec. A-162. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 4, chapter 8, in the chapter headnote, the words "alcohol and drug treatment programs" are amended to read "substance use disorder treatment programs" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. A-163. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 5, Part 25, in the Part headnote, the words "substance abuse prevention and treatment" are amended to read "substance use disorder prevention and treatment" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. A-164. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 5, chapter 521, in the chapter headnote, the words "substance abuse prevention and treatment" are amended to read "substance use disorder prevention and treatment" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. A-165. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 5, chapter 521, subchapter 4-A, in the subchapter headnote, the words "substance abuse services commission" are amended to read "substance use disorder services commission" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. A-166. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 20-A, chapter 223, subchapter 7-A, in the subchapter headnote, the words "school substance abuse services" are amended to read "school substance use disorder services" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. A-167. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 25, Part 13, in the Part headnote, the words "substance abuse assistance" are amended to read "substance use disorder assistance" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. A-168. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 25, chapter 601, in the chapter headnote, the words "substance abuse assistance program" are amended to read "substance use disorder assistance program" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. A-169. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 26, chapter 7, subchapter 3-A, in the subchapter headnote, the words "substance abuse testing" are amended to read "substance use testing" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

PART B

Sec. B-1. Executive branch rules, forms, policies and publications. On or after the effective date of this section, when adopting or amending rules and developing or publishing forms, policies and publications, all executive branch entities shall replace references to "substance abuse" with references to "substance use disorder" and shall ensure that lan-

guage referring to persons with substance use disorder is consistent with respectful, "person first," language.

Sec. B-2. Intent; effect. This Act is not intended to and does not change the eligibility requirements for services or benefits or result in an expansion of services or benefits provided by the Department of Health and Human Services or impact eligibility or requirements for federal programs and grants.

See title page for effective date.

CHAPTER 408

H.P. 1305 - L.D. 1872

An Act To Enhance the Operations of the Telecommunications Relay Services Advisory Council

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

Whereas, provisions in this legislation relating to funding levels for telecommunications relay services need to be in place before contracts to provide telecommunication relay services are scheduled to be executed in June 2018; 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. 3 MRSA §959, sub-§1, ¶P, as amended by PL 2017, c. 255, §1, is further amended to read:

P. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters shall use the following list as a guideline for scheduling reviews:

- (1) Public Advocate in 2019;
- (2) Board of Directors, Maine Municipal and Rural Electrification Cooperative Agency in 2015;
- (3) Public Utilities Commission, including the Emergency Services Communication Bureau, in 2021; and
- (5) Telecommunications Relay Services ~~Advisory~~ Council in 2017.

Sec. 2. 5 MRSA §12004-G, sub-§30-C, as enacted by PL 2005, c. 605, §3, is amended to read:

30-C.

Public	Telecommunica-	Not Au-	35-A
Utilities	tions Relay	thorized	MRSA
	Services Advi-	Some	§8704
	sory Council	Expenses	

Sec. 3. 35-A MRSA §7104, sub-§7, as amended by PL 2011, c. 623, Pt. B, §16, is further amended to read:

7. Telecommunications relay services support.

In order to ensure the affordability of telecommunications relay services throughout the State, the commission shall establish funding support for telecommunications relay services, including related outreach programs, within the state universal service fund established pursuant to subsection 3.

A. In establishing the total level of support for the state universal service fund, the commission shall include funding levels for telecommunications relay services as ~~recommended requested~~ by the Telecommunications Relay Services Advisory Council, as established in section 8704, ~~unless the commission determines, upon its own motion or upon the request of a voice network service provider, that the recommended funding levels may be unreasonable. If the commission determines that the funding levels may be unreasonable, the commission shall open a proceeding to determine a reasonable funding level for telecommunications relay services, including related outreach programs. Upon the conclusion of the proceeding, the commission shall establish funding support for telecommunications relay services, including related outreach programs, that it has found to be reasonable within the state universal service fund pursuant to the submission of an annual budget in accordance with section 8704, subsection 6. The commission shall transfer funds requested by the council, up to a maximum of \$600,000 annually, in quarterly installments to the Telecommunications Relay Services Council Fund established in section 8704, subsection 2-A.~~ The commission shall require contributions to the state universal service fund on a quarterly basis to meet the established funding support levels.

B. ~~In determining reasonable funding levels for telecommunications relay services, including related outreach programs, the commission may consider whether the recommended funding is for telecommunications relay services, including related outreach programs, that are:~~

- (1) Federally required services;

~~(2) Services provided in other states with a similar deaf, hard of hearing and speech impaired population as this State; or~~

~~(3) Services that are designed to maximize the effectiveness of telecommunications relay services through the application of new technologies.~~

Sec. 4. 35-A MRSA §8702, sub-§1, as enacted by PL 1989, c. 851, §7, is amended to read:

1. Council. ~~"Advisory council"~~ "Council" means the Telecommunications Relay Services Advisory Council.

Sec. 5. 35-A MRSA §8703, sub-§§4 and 8, as enacted by PL 1989, c. 851, §7, are amended to read:

4. Blockage level. The allowable blockage level for the telecommunications relay services must be reasonable. Complaints relating to the reasonableness of the blockage level may be brought to the commission by the ~~advisory council~~ or by 10 or more aggrieved persons pursuant to section 1302, subsection 1.

8. Council. The providers of telecommunications relay services must take into consideration any comments from the ~~advisory council~~.

Sec. 6. 35-A MRSA §8704, as amended by PL 2015, c. 398, §1, is further amended to read:

§8704. Council

The Telecommunications Relay Services Advisory Council, as established by Title 5, section 12004-G, subsection 30-C, shall evaluate telecommunications relay services in this State and ~~provide advice to providers of telecommunications relay services~~ implement the Maine telecommunications relay services program as certified by the Federal Communications Commission pursuant to 47 Code of Federal Regulations, Part 64, Subpart F.

1. Membership. The ~~advisory council~~ consists of 12 members as follows:

A. The Director of the Division for the Deaf, Hard of Hearing and Late Deafened, Bureau of Rehabilitation Services, Department of Labor, or a designee;

B. The chair of the Commission for the Deaf, Hard of Hearing and Late Deafened established by Title 5, section 12004-J, subsection 17, or a designee;

C. One member from the Public Utilities Commission, appointed by the commissioners;

D. One member from the office of the Public Advocate, appointed by the Public Advocate; and

E. Eight members appointed by the Governor as follows:

- (1) One member from the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf;
- (2) One member from a statewide association for the deaf;
- (3) One member from a disability rights organization in this State;
- (4) One member from the largest incumbent local exchange carrier providing telecommunications relay service in this State;
- (5) One member of a telephone association in this State, except that the representative under this subparagraph may not be a representative of the carrier under subparagraph (4);
- (6) Two members from the general public who use telecommunications devices for the deaf that operate in connection with telecommunications relay services as their primary means of telecommunications; and
- (7) One member representing a company that provides telecommunications relay services through the Internet, wireless telecommunications or cable telecommunications.

2. Compensation. ~~Compensation is not authorized. Members of the council are not authorized to receive payment or reimbursement for attendance or participation in regular meetings of the council, including but not limited to per diem compensation and mileage costs. The council is authorized to reimburse members and individuals designated by the council for costs associated with participation in conferences regarding telecommunications relay services and telecommunications devices for the deaf or technologies for the deaf and hard of hearing.~~

2-A. Telecommunications Relay Services Council Fund. ~~The Telecommunications Relay Services Council Fund, referred to in this section as "the fund," is established as a nonlapsing fund to fund the activities of the council in accordance with this section. The fund receives funds transferred by the commission in accordance with section 7104, subsection 7. No more than \$600,000 may be transferred into the fund annually.~~

2-B. Meeting costs. ~~The council is authorized to pay for costs associated with scheduled meetings of the council or any meeting of a duly authorized subcommittee of the council, including costs associated with a venue, refreshments, interpreters for meeting attendees and transcription services.~~

3. Technical assistance. ~~The commission shall provide technical assistance to the advisory council.~~

4. Appointment of chair and vice-chair. ~~The Every 2 years, the members shall annually elect a chair and a vice-chair from among the membership. The vice-chair shall serve as acting chair in the absence of the chair. The council shall meet at the call of the chair but no fewer than 4 times during the calendar year. The chair may delegate, as necessary, duties to members of the council, either individually or through the formation of subcommittees, to carry out the functions of the council.~~

5. Powers and duties. ~~The advisory council shall evaluate telecommunications relay services in this State and shall advise providers of telecommunications relay services regarding telecommunications relay service matters, implement the Maine telecommunications relay services program as certified by the Federal Communications Commission pursuant to 47 Code of Federal Regulations, Part 64, Subpart F. In implementing the state program, the council shall develop and execute programs and policies as necessary, including, but not limited to, the development of training standards and an evaluation of the service services being provided, including the quality and availability of that service those services. The advisory council may enter into contracts with telecommunications relay service providers for the purpose of providing telecommunications relay services.~~

A. ~~The council may enter into one or more contracts with telecommunications relay services providers for the purpose of providing intrastate telecommunications relay services. Notwithstanding any law to the contrary, the council shall choose one or more telecommunications relay services providers to provide intrastate telecommunications relay services through a bidding process developed in consultation with the division of purchases within the Department of Administrative and Financial Services, Bureau of General Services to be held no less than once every 5 years. The bidding process must ensure a process that recognizes the unique nature and limited number of telecommunications relay services providers.~~

B. ~~The council may enter into agreements with one or more entities to work with the telecommunications relay services providers to encourage use of telecommunications relay services. Notwithstanding any law to the contrary, the council, in consultation with the division of purchases within the Department of Administrative and Financial Services, Bureau of General Services shall develop a process for entering into such agreements that recognizes the limited number of entities providing the services sought by the council. Any agreement established under this paragraph may include compensation for outreach services that encourage the use of telecommunications relay services.~~

C. The council may organize and fund projects designed to promote the use of telecommunications relay services, including but not limited to surveys, public forums and events.

D. The council may develop, administer and fund pilot projects to provide access to telecommunications relay services.

6. Council budget. The council shall prepare and submit to the commission an annual budget of the projected costs of the council under this section for the coming fiscal year. The annual budget may not exceed \$600,000. The annual budget must be submitted to the commission and the commission shall transfer funds quarterly to meet the council's budgeted costs to the fund established in subsection 2-A and pursuant to section 7104, subsection 7.

7. Conflicts. A member of the council may not participate in any decision on any contract entered into by the council under this section if that member has any interest, direct or indirect, in any firm, partnership, corporation or association that is party to the contract. The interest must be disclosed to the council in writing and must be set forth in the minutes of the council.

8. Report. Beginning December 1, 2019 and annually thereafter, the council shall submit a report to the Public Utilities Commission that details the activities of the council, including all the expenditures the council has made from the fund and how all vendors that the council contracts with for services were selected.

Sec. 7. Appropriations and allocations. The following appropriations and allocations are made.

TELECOMMUNICATIONS RELAY SERVICES COUNCIL

Telecommunications Relay Services Council Fund N288

Initiative: Provides allocations for the annual budget for the Telecommunications Relay Services Council.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$150,000	\$600,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$150,000	\$600,000

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

Effective May 1, 2018.

**CHAPTER 409
H.P. 1199 - L.D. 1719**

**An Act To Implement a
Regulatory Structure for Adult
Use Marijuana**

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

Whereas, the people of the State of Maine in November 2016 passed into law the Marijuana Legalization Act, which establishes a system of licensing for the cultivation, manufacture, testing and retail sale of adult use marijuana and adult use marijuana products in the State and which enables persons 21 years of age or older to legally acquire, possess and consume adult use marijuana and adult use marijuana products and to cultivate marijuana for personal use; and

Whereas, amendments to the Marijuana Legalization Act are necessary to provide clarity in the licensing and regulation of adult use marijuana establishments and in the oversight and enforcement of the laws regarding the personal use and home cultivation of marijuana; and

Whereas, to facilitate the timely implementation of a retail marketplace in the State for adult use marijuana and adult use marijuana products, the agencies charged by law with the implementation, administration and enforcement of the Marijuana Legalization Act must adopt rules in accordance with that Act and the Legislature must review those rules in accordance with the Maine Administrative Procedure Act as soon as is practicable; 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. 5 MRSA §12004-I, sub-§52-C is enacted to read:

52-C.

<u>Judiciary:</u>	<u>Marijuana</u>	<u>Expenses</u>	<u>28-B MRSA</u>
<u>Marijuana</u>	<u>Advisory</u>	<u>Only</u>	<u>§901</u>
	<u>Commission</u>		

Sec. A-2. 7 MRSA §1-C, as enacted by PL 2017, c. 278, §1, is repealed.

Sec. A-3. 7 MRSA c. 417, as amended, is repealed.

Sec. A-4. 22 MRSA §3763, sub-§11, ¶J, as enacted by PL 2017, c. 208, §2, is amended to read:

J. ~~Retail~~ Adult use marijuana and ~~retail~~ adult use marijuana products, as defined by Title 7 ~~28-B~~, section ~~2442~~ 102.

Sec. A-5. 26 MRSA §772, sub-§2, as amended by PL 2017, c. 286, §2, is further amended to read:

2. Rules; list of employment and occupations. The director shall adopt rules to develop and maintain a list of employment and occupations not suitable for a minor. The rules must conform as far as practicable to the child labor provisions of the federal Fair Labor Standards Act of 1938, 29 United States Code, Section 212 and any associated regulations. The rules must also contain provisions prohibiting the employment of minors in places having nude entertainment and in registered dispensaries of marijuana for medical use authorized under Title 22, chapter 558-C and in establishments that cultivate, produce or sell marijuana or products in which marijuana is an ingredient ~~or in recreational marijuana social clubs~~ as authorized under Title 7 ~~28-B~~, chapter ~~417~~ 1.

Sec. A-6. 28-B MRSA is enacted to read:

TITLE 28-B
ADULT USE MARIJUANA
CHAPTER 1
MARIJUANA LEGALIZATION ACT
SUBCHAPTER 1
GENERAL PROVISIONS

§101. Short title

This chapter may be known and cited as "the Marijuana Legalization Act."

§102. Definitions

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

1. Adult use marijuana. "Adult use marijuana" means marijuana cultivated, manufactured, distributed or sold by a marijuana establishment.

2. Adult use marijuana product. "Adult use marijuana product" means a marijuana product that is manufactured, distributed or sold by a marijuana establishment.

3. Another jurisdiction. "Another jurisdiction" means the Federal Government, the United States military, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern

Mariana Islands, the United States Virgin Islands, Guam, American Samoa and each of the several states of the United States except Maine.

4. Applicant. "Applicant" means a person that submits an application for a license under this chapter to the department for review that the department has not yet approved or denied.

5. Batch. "Batch" means:

A. A specific quantity of adult use marijuana harvested during a specified period of time from a specified cultivation area within a cultivation facility; or

B. A specific quantity of adult use marijuana or adult use marijuana products produced during a specified period of time in a specified manufacturing area within a products manufacturing facility.

6. Batch number. "Batch number" means a distinct group of numbers, letters or symbols, or any combination thereof, assigned to a specific batch of adult use marijuana by a cultivation facility or to a specific batch of adult use marijuana or adult use marijuana products by a products manufacturing facility.

7. Business entity. "Business entity" means a partnership, association, company, corporation, limited liability company or other entity incorporated or otherwise formed or organized by law. "Business entity" does not include a federal, state or municipal government organization.

8. Child-resistant. "Child-resistant" means, with respect to packaging or a container:

A. Specially designed or constructed to be significantly difficult for a typical child under 5 years of age to open and not to be significantly difficult for a typical adult to open and reseal; and

B. With respect to any product intended for more than a single use or that contains multiple servings, resealable.

9. Commissioner. "Commissioner" means the Commissioner of Administrative and Financial Services.

10. Container. "Container" means a sealed package in which adult use marijuana or an adult use marijuana product is placed by a marijuana store prior to sale to a consumer and that meets all applicable packaging, labeling and health and safety requirements of this chapter and the rules adopted pursuant to this chapter.

11. Criminal justice agency. "Criminal justice agency" has the same meaning as in Title 16, section 803, subsection 4.

12. Cultivation or cultivate. "Cultivation" or "cultivate" means the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other

processing of marijuana for use or sale. "Cultivation" or "cultivate" does not include manufacturing, testing or marijuana extraction.

13. Cultivation facility. "Cultivation facility" means a facility licensed under this chapter to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to products manufacturing facilities, to marijuana stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores.

14. Department. "Department" means the Department of Administrative and Financial Services.

15. Disqualifying drug offense. "Disqualifying drug offense" means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for one year or more, except that "disqualifying drug offense" does not include:

A. An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years prior to the submission of an application for a license under this chapter; or

B. An offense that consisted of conduct that is authorized under chapter 3.

16. Edible marijuana product. "Edible marijuana product" means a marijuana product intended to be consumed orally, including, but not limited to, any type of food, drink or pill containing marijuana or marijuana concentrate.

17. Flowering. "Flowering" means, with respect to a marijuana plant, the gametophytic or reproductive state of a female marijuana plant during which the plant is in a light cycle intended to produce flowers, trichomes and cannabinoids characteristic of marijuana.

18. Identity statement. "Identity statement" means the name of a business entity as it is commonly known and used in any advertising or marketing by the business entity.

19. Immature marijuana plant. "Immature marijuana plant" means a marijuana plant that is not a mature marijuana plant or a seedling.

20. Inherently hazardous substance. "Inherently hazardous substance" means a liquid chemical, compressed gas or commercial product that has a flash point at or lower than 38 degrees Celsius or 100 degrees Fahrenheit, including, but not limited to, butane, propane and diethyl ether. "Inherently hazardous substance" does not include any form of alcohol or ethanol.

21. Intoxication. "Intoxication" means a substantial impairment of an individual's mental or physical faculties as a result of drug or alcohol use.

22. Law enforcement officer. "Law enforcement officer" has the same meaning as in Title 17-A, section 2, subsection 17.

23. Licensed premises. "Licensed premises" means the premises specified in a license to operate a marijuana establishment within which the licensee is authorized under this chapter and the rules adopted pursuant to this chapter to cultivate, manufacture, distribute, test or sell adult use marijuana or adult use marijuana products.

24. Licensee. "Licensee" means a person licensed pursuant to this chapter to operate a marijuana establishment.

25. Limited access area. "Limited access area" means a building, room or other area within the licensed premises of a marijuana establishment where a licensee is authorized to cultivate, store, weigh, manufacture, package or otherwise prepare for sale adult use marijuana and adult use marijuana products in accordance with the provisions of this chapter and the rules adopted pursuant to this chapter.

26. Manufacturing or manufacture. "Manufacturing" or "manufacture" means the production, blending, infusing, compounding or other preparation of marijuana and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. "Manufacturing" or "manufacture" does not include cultivation or testing.

27. Marijuana. "Marijuana" means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes marijuana concentrate but does not include industrial hemp as defined in Title 7, section 2231, subsection 1 or a marijuana product.

28. Marijuana concentrate. "Marijuana concentrate" means the resin extracted from any part of a marijuana plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish. In determining the weight of marijuana concentrate in a marijuana product, the weight of any other ingredient combined with marijuana or marijuana concentrate to prepare the marijuana product may not be included.

29. Marijuana establishment. "Marijuana establishment" means a cultivation facility, a products manufacturing facility, a testing facility or a marijuana store licensed under this chapter.

30. Marijuana extraction. "Marijuana extraction" means the process of extracting marijuana concentrate from marijuana using water, lipids, gases, solvents or other chemicals or chemical processes.

31. Marijuana flower. "Marijuana flower" means the pistillate reproductive organs of a mature marijuana plant, whether processed or unprocessed, including the flowers and buds of the plant. "Marijuana flower" does not include marijuana trim or whole mature marijuana plants.

32. Marijuana plant. "Marijuana plant" means all species of the plant genus cannabis, including, but not limited to, a mother plant, a mature marijuana plant, an immature marijuana plant or a seedling.

33. Marijuana product. "Marijuana product" means a product composed of marijuana or marijuana concentrate and other ingredients that is intended for use or consumption. "Marijuana product" includes, but is not limited to, an edible marijuana product, a marijuana ointment and a marijuana tincture. "Marijuana product" does not include marijuana concentrate.

34. Marijuana store. "Marijuana store" means a facility licensed under this chapter to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, to purchase adult use marijuana and adult use marijuana products from a products manufacturing facility and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

35. Marijuana trim. "Marijuana trim" means any part of a marijuana plant, whether processed or unprocessed, that is not marijuana flower or a marijuana seed.

36. Mature marijuana plant. "Mature marijuana plant" means a marijuana plant that is flowering.

37. Mother plant. "Mother plant" means a mature marijuana plant that is used solely for the taking of seedling cuttings.

38. Municipality. "Municipality" means a city, town or plantation in this State that is not located within the unorganized and deorganized areas.

39. Opaque. "Opaque" means, with respect to packaging or a container, that any product inside of the packaging or container cannot be seen from outside the packaging or container.

40. Person. "Person" means a natural person or a business entity.

41. Plant canopy. "Plant canopy" means the total surface area within the licensed premises of a cultivation facility that is authorized by the department for use at any time by the cultivation facility licensee to cultivate mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of non-contiguous areas, each component area must be separated by identifiable boundaries. If a tiered or shelving

system is used by the cultivation facility licensee, the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the licensed premises of a cultivation facility that are used by the licensee to cultivate immature marijuana plants and seedlings and that are not used by the licensee at any time to cultivate mature marijuana plants.

42. Primary caregiver. "Primary caregiver" has the same meaning as in Title 22, section 2422, subsection 8-A.

43. Products manufacturing facility. "Products manufacturing facility" means a facility licensed under this chapter to purchase adult use marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package adult use marijuana and adult use marijuana products; and to sell adult use marijuana and adult use marijuana products to marijuana stores and to other products manufacturing facilities.

44. Propagation. "Propagation" means the process of reproducing marijuana plants through the use of marijuana seeds, cuttings or grafting.

45. Qualifying patient. "Qualifying patient" means a person who possesses a valid certification for the medical use of marijuana pursuant to Title 22, section 2423-B.

46. Registered dispensary. "Registered dispensary" means a nonprofit dispensary that is registered pursuant to Title 22, section 2428.

47. Registered primary caregiver. "Registered primary caregiver" has the same meaning as in Title 22, section 2422, subsection 11.

48. Resident. "Resident" means a natural person who:

A. Has filed a resident individual income tax return in this State pursuant to Title 36, Part 8 in each of the 4 years prior to the year in which the person files an application for licensure under this chapter. This paragraph is repealed June 1, 2021;

B. Is domiciled in this State; and

C. Maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State.

49. Sale or sell. "Sale" or "sell" means a transfer or delivery of marijuana or marijuana products for consideration.

50. Sample. "Sample" means:

A. An amount of marijuana or an amount of a marijuana product provided to a testing facility by a marijuana establishment or other person for test-

ing or research and development purposes in accordance with subchapter 6;

B. An amount of adult use marijuana or an amount of an adult use marijuana product collected from a licensee by the department for the purposes of testing the marijuana or marijuana product for product quality control purposes pursuant to section 512, subsection 2;

C. An amount of adult use marijuana provided by a cultivation facility to another licensee for business or marketing purposes pursuant to section 501, subsection 8; or

D. An amount of adult use marijuana or an amount of an adult use marijuana product provided to another licensee by a products manufacturing facility for business or marketing purposes pursuant to section 502, subsection 6.

51. Seedling. "Seedling" means a marijuana plant that is:

A. Not flowering;

B. Less than 6 inches in height; and

C. Less than 6 inches in width.

52. Tamper-evident. "Tamper-evident" means, with respect to a device or process, bearing a seal, a label or a marking that makes unauthorized access to or tampering with a package, product or container easily detectable.

53. Testing or test. "Testing" or "test" means the research and analysis of marijuana, marijuana products or other substances for contaminants, safety or potency. "Testing" or "test" does not include cultivation or manufacturing.

54. Testing facility. "Testing facility" means a facility licensed under this chapter to develop, research and test marijuana, marijuana products and other substances.

55. THC. "THC" means tetrahydrocannabinol.

56. Universal symbol. "Universal symbol" means an image developed by the department, and made available to licensees, that indicates that a container, package or product contains marijuana or contains or is a marijuana product.

57. Unorganized and deorganized areas. "Unorganized and deorganized areas" has the same meaning as in Title 12, section 682, subsection 1.

58. Visibly intoxicated. "Visibly intoxicated" means in a state of intoxication accompanied by a perceptible act, a series of acts or the appearance of an individual that clearly demonstrates the state of intoxication.

§103. Unauthorized conduct; penalties

1. Unauthorized conduct. Except as otherwise provided in this chapter, in the rules adopted pursuant to this chapter, in chapter 3 or in the Maine Medical Use of Marijuana Act or as specifically authorized pursuant to a license issued under this chapter, a person may not:

A. Cultivate, manufacture or test marijuana or marijuana products;

B. Sell or offer for sale marijuana or marijuana products; or

C. Use, possess, transport, transfer, furnish or purchase marijuana or marijuana products.

2. Penalties. In addition to any penalties that may be imposed pursuant to this chapter or chapter 3, a person that violates any other provision of law or rule governing the conduct prohibited under subsection 1 is subject to any criminal or civil penalties that may be imposed pursuant to that other law or rule.

§104. Implementation, administration and enforcement; staffing; rulemaking

1. Implementation, administration and enforcement. The department shall implement, administer and enforce this chapter and the rules adopted pursuant to this chapter and has the sole authority under this chapter to:

A. Grant or deny applications for the licensure of marijuana establishments under this chapter; and

B. Impose on a licensee any penalty authorized under this chapter or the rules adopted pursuant to this chapter, including, but not limited to, a monetary penalty or a suspension or revocation of the licensee's license, upon a determination that the licensee has committed a violation of this chapter, a rule adopted pursuant to this chapter or a condition of licensure.

2. Staffing. The department may employ personnel as necessary to implement, administer and enforce this chapter and the rules adopted pursuant to this chapter.

3. Rulemaking; consultation. The department shall adopt all rules necessary to implement, administer and enforce this chapter.

A. The department shall consult with the Department of Agriculture, Conservation and Forestry prior to the adoption of any rules concerning the regulation of the cultivation, manufacture and testing of adult use marijuana and adult use marijuana products at cultivation facilities, products manufacturing facilities and testing facilities; the regulation of marijuana seeds and clones and marijuana plants; the use of pesticides, fungicides and herbicides in cultivation; the imposition of

limits on the concentration of THC and other cannabinoids per serving in adult use marijuana products; odor control standards, sanitary standards, refrigeration requirements and storage and warehousing standards for licensees; and the regulation of the preparation, manufacture, testing, packaging and labeling of adult use marijuana and adult use marijuana products.

B. The department shall consult with the Department of Labor prior to the adoption of any rules concerning workplace, employment or other labor matters involved in the regulation of adult use marijuana and adult use marijuana products under this chapter.

C. The department shall consult with the Department of Public Safety prior to the adoption of any rules concerning public safety or law enforcement matters involved in the regulation of adult use marijuana and adult use marijuana products under this chapter.

Except as otherwise provided in this chapter, all rules adopted pursuant to this chapter are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

§105. Tracking system

The department shall implement and administer a system, referred to in this section as "the tracking system," for the tracking of adult use marijuana and adult use marijuana products from immature marijuana plant to the point of retail sale, disposal or destruction.

1. Data submission requirements. The tracking system must allow licensees to submit tracking data for adult use marijuana or adult use marijuana products to the department through manual data entry or through the use of tracking system software commonly used within the marijuana industry as determined by the department.

2. Rules. The department shall adopt rules regarding the implementation and administration of the tracking system and tracking requirements for licensees.

§106. Individual identification cards

The department shall issue individual identification cards to natural persons licensed under this chapter and, upon the request of a licensee, shall issue individual identification cards to owners, officers, managers, contractors, employees or other support staff of the licensee who meet the requirements of this section for the issuance of an individual identification card.

1. Rules. The department shall adopt rules regarding the issuance and format of and the information to be included on individual identification cards issued pursuant to this section.

2. Criminal history record check. Prior to issuing an individual identification card to a natural person pursuant to this section, the department shall require the person to submit to a criminal history record check in accordance with section 204.

§107. Collection and analysis of public health and safety data

The department shall develop programs or initiatives to facilitate the collection and analysis of data regarding the effects of the use of marijuana in the State, including, but not limited to, youth and adult marijuana use; school suspension and discipline relating to the use of marijuana; poison center calls, emergency department visits and hospitalizations relating to the use of or exposure to marijuana; operating under the influence citations or arrests relating to the use of marijuana; motor vehicle accidents, including information on fatalities, relating to the use of marijuana; violent crime relating to the use of marijuana generally; violent crime and property crime relating to the regulated and unregulated adult use marijuana markets; and marijuana-related citations or arrests. The department may adopt rules to implement this section.

§108. Awareness and education on public health and safety matters

The department shall develop and implement or facilitate the development and implementation by a public or private entity of programs, initiatives and campaigns focused on increasing the awareness and education of the public on health and safety matters relating to the use of marijuana and marijuana products, including, but not limited to, programs, initiatives and campaigns focused on preventing and deterring the use of marijuana and marijuana products by persons under 21 years of age. Programs, initiatives and campaigns developed and implemented pursuant to this section may be funded with revenue from the Adult Use Marijuana Public Health and Safety Fund established in section 1101. The department may adopt rules to implement this section.

§109. Enhanced training for criminal justice agencies

The department shall develop and implement or facilitate the development and implementation by a public or private entity of programs or initiatives providing enhanced training for criminal justice agencies in the requirements and enforcement of this chapter and the rules adopted pursuant to this chapter, including, but not limited to, programs providing grants to regional or local criminal justice agencies to train law enforcement officers in inspections, investigations, searches, seizures, forfeitures and personal use and home cultivation allowances under this chapter and chapter 3 and the rules adopted pursuant to this chapter and in drug recognition procedures and the general enforcement of the State's motor vehicle and criminal

laws relating to the use of marijuana. Training programs or initiatives for criminal justice agencies developed and implemented pursuant to this section may be funded with revenue from the Adult Use Marijuana Public Health and Safety Fund established in section 1101. The department may adopt rules to implement this section.

§110. Investigation by a criminal justice agency of unlawful activity

A criminal justice agency may investigate unlawful activity in relation to a marijuana establishment and may conduct a criminal history record check of a licensee or its employees during an investigation of unlawful activity in relation to a marijuana establishment.

§111. Cultivation, care or sale of marijuana by state or local agency prohibited

A state, county or local agency or department, including, but not limited to, the department and a criminal justice agency, may not:

1. Cultivation or care of marijuana or marijuana products prohibited. Cultivate or otherwise care for or be required to cultivate or otherwise care for any marijuana or marijuana products belonging to, forfeited by or seized from any licensee or person pursuant to this chapter or chapter 3 or pursuant to any other applicable criminal or civil laws or rules; or

2. Sale of marijuana or marijuana products prohibited. Sell or be required to sell marijuana or marijuana products belonging to, forfeited by or seized from any licensee or person pursuant to this chapter or chapter 3 or pursuant to any other applicable criminal or civil laws or rules or that are otherwise in the possession of the agency or department.

§112. Employment policies

Except as otherwise provided in the Maine Medical Use of Marijuana Act, an employer:

1. Marijuana in workplace. Is not required to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or cultivation of marijuana or marijuana products in the workplace;

2. Workplace policies regarding marijuana use. May enact and enforce workplace policies restricting the use of marijuana and marijuana products by employees in the workplace or while otherwise engaged in activities within the course and scope of employment; and

3. Discipline of employees. May discipline employees who are under the influence of marijuana in the workplace or while otherwise engaged in activities within the course and scope of employment in accordance with the employer's workplace policies regarding the use of marijuana and marijuana products by employees.

§113. Report to Legislature

1. Report required. By February 15, 2020, and annually thereafter, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over adult use marijuana matters as provided in this section.

2. Report contents. The report required under subsection 1 must, at a minimum, include the following information:

A. The number of applications for each type of license submitted to the department pursuant to this chapter during the prior calendar year, including, if applicable, the number of applications for license renewals, and the number of each type of license conditionally approved by the department during the prior calendar year;

B. The total number of each type of active license issued by the department pursuant to this chapter in the prior calendar year following local authorization of a conditionally approved licensee;

C. The total square footage of plant canopy approved by the department for active cultivation facilities licensed in the prior calendar year, the percentage of active cultivation facility licenses by cultivation tier and, if applicable, the number of approved increases in the maximum plant canopy allowed under a tier 4 cultivation facility license in the prior calendar year pursuant to section 304;

D. The total amount of application fees and license fees collected pursuant to this chapter and the total amount of the excise and sales tax revenue collected on the sale of adult use marijuana and adult use marijuana products during the prior calendar year;

E. An overview of current adult use marijuana-related staffing at the department and the cost to the department to regulate the adult use marijuana industry in the State during the prior fiscal year and cost projections for the upcoming fiscal year;

F. The total reported volume and value of adult use marijuana cultivated and sold by all cultivation facilities in the prior calendar year, when available;

G. The total reported volume and value of adult use marijuana and adult use marijuana products sold by all marijuana stores in the prior calendar year, when available;

H. The number of inspections of the licensed premises of licensees performed by the department during the prior calendar year and the results of those inspections, including, but not limited to, the number of inspections resulting in license vio-

lations and the percentage of all licensees inspected during the prior calendar year;

I. The number of license violations committed by licensees during the prior calendar year and a breakdown of those violations into specific categories based on the type of violation and the outcome of the violation, including, but not limited to, the total amount of monetary penalties imposed and collected by the department and the percentage of total license violations resulting in the imposition of a monetary penalty, license suspension or license revocation;

J. Public health and safety data collected, received or analyzed by the department pursuant to section 107 in the prior calendar year; and

K. Recommendations, including any suggested legislation, to address any issues with the regulation of the adult use marijuana industry in the State encountered by the department in the prior calendar year.

3. Authority to report out legislation. After reviewing the report required under subsection 1, the joint standing committee of the Legislature having jurisdiction over adult use marijuana matters may report out legislation to implement any recommendations contained in the report or to address any other issues identified in the report.

SUBCHAPTER 2

GENERAL LICENSING REQUIREMENTS

§201. License process; license types

The department, upon receipt of an application in the prescribed form that meets all applicable requirements for licensure under this chapter and the rules adopted pursuant to this chapter, shall issue to the applicant a conditional license to operate one or more of the following types of marijuana establishments or shall deny the application in accordance with section 206:

1. Cultivation facility. Consistent with the requirements and restrictions of section 205, subsection 2, paragraph A and subchapter 3, a cultivation facility license;

2. Testing facility. Consistent with the requirements and restrictions of section 205, subsection 2, paragraph B and section 503, subsection 2, a testing facility license;

3. Products manufacturing facility. A products manufacturing facility license; or

4. Marijuana store. Consistent with the restrictions of section 205, subsection 2, paragraph C, a marijuana store license.

Except as provided in section 205, the department may not impose any limitation on the number of each

type of license that it issues to a qualified individual applicant or on the total number of each type of license that it issues to qualified applicants pursuant to this chapter.

§202. General licensing criteria

An applicant for a license to operate a marijuana establishment must meet each of the following requirements, if applicable. Except as otherwise provided in this section, if the applicant is a business entity, every officer, director, manager and general partner of the business entity must meet each of the requirements of this section. An applicant shall disclose in or include with its application the names and addresses of the applicant and all natural persons and business entities having a direct or indirect financial interest in the applied-for license and the nature and extent of the financial interest held by each person or entity and, if applicable, the nature and extent of any financial interest the person or entity has in any other license applied for or issued under this chapter.

1. Age. The applicant must be at least 21 years of age. If the applicant is a business entity, every officer, director, manager and general partner of the business entity must be at least 21 years of age.

2. Resident. If the applicant is a natural person, the applicant must be a resident. If the applicant is a business entity:

A. Every officer, director, manager and general partner of the business entity must be a natural person who is a resident; and

B. A majority of the shares, membership interests, partnership interests or other equity ownership interests as applicable to the business entity must be held or owned by natural persons who are residents or business entities whose owners are all natural persons who are residents.

This subsection does not apply to an applicant for a testing facility license.

3. Incorporated in State. If the applicant is a business entity, the business entity must be incorporated in the State or otherwise formed or organized under the laws of the State.

4. No disqualifying drug offense. The applicant may not have been previously convicted of a disqualifying drug offense.

5. Not employee of state agency. The applicant may not be employed by the department or any other state agency with regulatory authority under this chapter or the rules adopted pursuant to this chapter.

6. Not law enforcement officer or corrections officer. The applicant may not be a law enforcement officer; a corrections officer as defined in Title 25, section 2801-A, subsection 2; or any other natural per-

son subject to the certification requirements of Title 25, chapter 341.

7. No license revocation. The applicant may not have had a license previously issued under this chapter revoked.

8. No medical registry identification card or registration certificate revocation. The applicant may not have had a registry identification card or registration certificate previously issued pursuant to the Maine Medical Use of Marijuana Act revoked.

9. No revocation of other state marijuana license, permit, certificate or other government-issued authorization. The applicant may not have had a license, permit, certificate or other government-issued authorization issued in another jurisdiction allowing the cultivation, manufacture, testing or sale of marijuana or marijuana products revoked.

10. No outstanding court-ordered payments. A license may not be issued to an applicant that has any outstanding payments due in this State on court-ordered fines, court-appointed attorney's fees or court-ordered restitution.

11. Criminal history record check. The applicant must have submitted to a criminal history record check in accordance with the requirements of section 204.

12. Compliance with application process; no false statement of material fact. The applicant must have completed all application forms required by the department fully and truthfully and complied with all information requests of the department relating to the license application. A license may not be issued to an applicant that has knowingly or recklessly made any false statement of material fact to the department in applying for a license under this chapter. The department shall revoke the license of a licensee pursuant to subchapter 8 if, subsequent to the issuance of the license, the department determines that the licensee knowingly or recklessly made a false statement of material fact to the department in applying for the license.

§203. Additional licensing considerations

An applicant for a license to operate a marijuana establishment shall submit, and the department shall consider in determining whether to grant the license, the following additional information. If the applicant is a business entity, the applicant must submit the information required by this section for every officer, director, manager and general partner of the business entity.

1. Other convictions. The applicant shall submit information regarding the applicant's criminal convictions in this State or in another jurisdiction for any offense involving dishonesty, deception, misappropriation or fraud. The applicant may submit and the de-

partment shall consider if submitted any information regarding the applicant's criminal history record, including, but not limited to, evidence of rehabilitation, character references and educational achievements, with special consideration given to the time between the applicant's last criminal conviction and the consideration by the department of the application for licensure.

2. Tax compliance. The applicant shall submit information regarding:

A. The applicant's history of paying income and other taxes owed to the State, to another jurisdiction, if applicable, and to the United States Internal Revenue Service over the 2 years immediately preceding the year in which the application is filed; and

B. Any outstanding tax liens imposed or levied against the applicant in this State or in another jurisdiction within the 5 years immediately preceding the year in which the application is filed.

3. Other state marijuana-related violations or penalties. If the applicant has held a license, permit, certificate or other government-issued authorization in another jurisdiction allowing the cultivation, manufacture, testing or sale of marijuana or marijuana products, the applicant shall submit information regarding any violations by or penalties imposed on the applicant in that other jurisdiction.

§204. Criminal history record check

The department shall request a criminal history record check for each applicant for a license under this chapter and may at any time require a licensee to submit to a criminal history record check in accordance with this section. If the applicant is a business entity, every officer, director, manager and general partner of the business entity is required to submit to a criminal history record check in accordance with this section. A criminal history record check conducted pursuant to this section must include criminal history record information obtained from the Maine Criminal Justice Information System established in Title 16, section 631 and the Federal Bureau of Investigation.

1. Record of public criminal history information required. Criminal history record information obtained from the Maine Criminal Justice Information System pursuant to this section must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

2. Other state and national criminal history record information required. Criminal history record information obtained from the Federal Bureau of Investigation pursuant to this section must include other state and national criminal history record information.

3. Fingerprinting. An individual required to submit to a criminal history record check under this section shall submit to having the individual's fingerprints taken. The State Police, upon payment by the individual of the fee required under subsection 4, shall take or cause to be taken the individual's fingerprints and shall forward the fingerprints to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification shall conduct the state and national criminal history record checks required under this section. Except for the portion of a payment, if any, that constitutes the processing fee for a criminal history record check charged by the Federal Bureau of Investigation, all money received by the State Police under this section must be paid to the Treasurer of State, who shall apply the money to the expenses incurred by the Department of Public Safety in the administration of this section.

4. Fees. The department shall by rule set the amount of the fee to be paid by an individual under subsection 3 for each criminal history record check required to be performed under this section.

5. Availability of criminal history record information. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

6. Use of criminal history record information. State and national criminal history record information obtained by the department under this section may be used only for the purpose of screening an applicant for a license or a licensee under this chapter or as necessary for the issuance of an individual identification card under section 106.

7. Confidentiality. All criminal history record information obtained by the department pursuant to this section is confidential, is for the official use of the department only and may not be disseminated outside of the department or disclosed to any other person or entity except as provided in subsection 5.

8. Rules. The department, after consultation with the Department of Public Safety, Bureau of State Police, State Bureau of Identification, shall adopt rules to implement this section.

§205. Application process; issuance of license

1. Forms; payment of fees. An applicant shall file an application on forms prepared and furnished by the department for the type of license sought along with the appropriate application fee as determined by the department pursuant to section 207.

2. Applications for multiple licenses. An applicant may apply for and be granted multiple licenses of any license type under this chapter, except that:

A. If the applicant has applied for the issuance or renewal of a cultivation facility license, the issuance or renewal of the cultivation facility license may not result in the applicant or a person with a direct or indirect financial interest in that license holding or having a direct or indirect financial interest in:

(1) More than 3 cultivation facility licenses; or

(2) Multiple cultivation facility licenses with a combined total licensed amount of plant canopy exceeding 30,000 square feet, except when that exceedance is solely attributable to approved increases in the maximum licensed area of plant canopy authorized under a tier 4 cultivation facility license pursuant to section 304;

B. If the applicant has applied for the issuance or renewal of a testing facility license, the applicant may not be a primary caregiver or registered primary caregiver or have an interest in a registered dispensary, a cultivation facility license, a products manufacturing facility license or a marijuana store license. If the applicant has applied for the issuance or renewal of any license under this chapter that is not a testing facility license, the applicant may not have an interest in a testing facility license. An applicant that meets the requirements for the issuance of a testing facility license under this chapter and the requirements of this paragraph may apply for and be issued multiple testing facility licenses. For purposes of this paragraph, "interest" means an equity ownership interest or a partial equity ownership interest or any other type of financial interest, including, but not limited to, being an investor or serving in a management position; and

C. If the applicant has applied for the issuance or renewal of a marijuana store license, the issuance or renewal of the marijuana store license may not result in the applicant or a person with a direct or indirect financial interest in that license holding or having a direct or indirect financial interest in more than 4 marijuana store licenses.

This paragraph is repealed January 1, 2022.

3. Issuance of conditional license. Within 90 days of receipt of an application for a license to operate a marijuana establishment or for renewal of an existing license to operate a marijuana establishment, the department either shall issue to the applicant a conditional license to operate the marijuana establishment if the applicant meets all applicable requirements for licensure under this chapter and the rules adopted

pursuant to this chapter or shall deny the application in accordance with section 206.

A. A licensee that has been issued a conditional license by the department may not engage in the cultivation, manufacture, testing or sale of adult use marijuana or adult use marijuana products until the department has issued an active license to the licensee pursuant to subsection 4.

B. A conditional license issued by the department pursuant to this subsection is effective for a period of one year from the date of issuance and may not be renewed. If a licensee issued a conditional license by the department fails to obtain an active license from the department pursuant to subsection 4 within one year from the date of issuance of the conditional license, the conditional license expires.

4. Issuance of active license upon certification of local authorization and payment of applicable license fee. The department shall issue an active license to an applicant that has been issued a conditional license pursuant to subsection 3 and that meets all applicable requirements of this subsection.

A. Within 10 days of receiving certification of local authorization from a municipality as required by section 402, subsection 3, paragraph B or, in the case of a marijuana establishment to be located in the unorganized and deorganized areas, from the Maine Land Use Planning Commission as required by section 403, subsection 3, paragraphs B and C, the department shall notify the applicant that certification of local authorization has been confirmed and that, in order for the department to issue an active license, the applicant must:

(1) Pay the applicable license fee required pursuant to section 207;

(2) Submit a facility plan that specifies the location, size and layout of the marijuana establishment within the municipality or, in the case of a marijuana establishment to be located in the unorganized and deorganized areas, within the town, plantation or township in which the marijuana establishment will be located;

(3) If the application is for a license to operate a cultivation facility, submit updated operating and cultivation plans as required under section 302 based upon the actual premises to be licensed, except that, if no changes to the original operating and cultivation plans submitted by the applicant are necessary based upon the actual premises to be licensed, then the applicant may satisfy this requirement by resubmitting the original operating

and cultivation plans and noting on those plans that no changes are necessary; and

(4) If the application is for a license to operate a nursery cultivation facility, as described in section 301, subsection 5, or a marijuana store, register with the State Tax Assessor pursuant to Title 36, section 1754-B to collect and remit the sales tax on the sale of adult use marijuana and adult use marijuana products imposed under Title 36, section 1811.

B. The department shall prepare and furnish to applicants, municipalities and the Maine Land Use Planning Commission a certification form by which the municipality may certify to the department that the applicant has obtained local authorization as required by section 402, subsection 3, paragraph B or, in the case of a marijuana establishment to be located in the unorganized and deorganized areas, the Maine Land Use Planning Commission may certify to the department that the applicant has obtained local authorization as required by section 403, subsection 3, paragraphs B and C.

C. Upon receipt of payment of the applicable license fee and any other documentation required under paragraph A, the department shall issue an active license to the applicant. The license must specify the date of issuance of the license, the period of licensure, the date of expiration of the license, the name of the licensee and the address of the licensed premises.

5. Each license separate. Each license issued by the department to an applicant under this chapter is separate and distinct from any other license issued by the department to that same applicant under this chapter. A person must obtain a separate license under this chapter for each proposed geographical location of any type of marijuana establishment.

6. Licensee must maintain possession of premises. As a condition of licensure, a licensee must at all times maintain possession of the licensed premises of the marijuana establishment that the licensee is licensed to operate, whether pursuant to a lease, rental agreement or other arrangement for possession of the premises or by virtue of ownership of the premises. If a licensee fails to maintain possession of the licensed premises, the licensee shall immediately cease all activities relating to the operation of the marijuana establishment and may apply to the department for relocation of the licensed premises pursuant to section 211 or may terminate its license pursuant to section 212.

§206. Denial of license

1. Denial for good cause. The department, for good cause, may deny an application for an initial license, a license renewal, a transfer of ownership interests or a relocation of licensed premises. Denial of an

application by the department pursuant to this section constitutes a final agency action as defined in Title 5, section 8002, subsection 4.

2. Good cause defined. As used in this section, "good cause" means a finding by the department that:

A. An applicant or licensee has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this chapter, the rules adopted pursuant to this chapter or any other applicable state or local law, rule or regulation; or

B. An applicant or licensee has failed to comply with any special terms, consent decree or conditions placed upon the previously issued license pursuant to an order of the department; the municipality in which the licensed premises are located; the town or plantation in the unorganized and deorganized areas in which the licensed premises are located; in the case of a township in the unorganized and deorganized areas in which the licensed premises are located, the county commissioners of the county in which the township is located; or, in the case of a marijuana establishment located in the unorganized and deorganized areas, the Maine Land Use Planning Commission.

3. Notification of denial and right to appeal.

Upon the department's determination to deny a license application, the department shall notify the applicant in writing of the denial, the basis for the denial and the applicant's right to appeal the denial to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

§207. Application fees; license fees

The department, in accordance with the provisions of this section, shall adopt by rule a licensing fee schedule establishing fees that are designed to meet, but not to exceed, the estimated licensing, enforcement and administrative costs of the department under this chapter.

1. Fees for cultivation facilities. For a cultivation facility license, the department shall require payment of an application fee and a license fee as follows:

A. For a tier 1 cultivation facility license, as described in section 301, subsection 1, an application fee of \$100 and a license fee as follows:

(1) If the applicant has applied for a plant-count-based tier 1 cultivation facility license as described in section 301, subsection 1, paragraph A, a license fee of not more than \$9 per mature marijuana plant for an outdoor cultivation facility and not more than \$17 per mature marijuana plant for an indoor cultivation facility or a cultivation facility with both indoor and outdoor cultivation areas; or

(2) If the applicant has applied for a plant-canopy-based tier 1 cultivation facility license as described in section 301, subsection 1, paragraph B, a license fee of not more than \$250 for an outdoor cultivation facility and not more than \$500 for an indoor cultivation facility or a cultivation facility with both indoor and outdoor cultivation areas;

B. For a tier 2 cultivation facility license, as described in section 301, subsection 2, an application fee of \$500 and a license fee of not more than \$1,500 for an outdoor cultivation facility and not more than \$3,000 for an indoor cultivation facility or a cultivation facility with both indoor and outdoor cultivation areas;

C. For a tier 3 cultivation facility license, as described in section 301, subsection 3, an application fee of \$500 and a license fee of not more than \$5,000 for an outdoor cultivation facility and not more than \$10,000 for an indoor cultivation facility or a cultivation facility with both indoor and outdoor cultivation areas;

D. For a tier 4 cultivation facility license, as described in section 301, subsection 4, an application fee of \$500 and a license fee of not more than \$15,000 for an outdoor cultivation facility and not more than \$30,000 for an indoor cultivation facility or a cultivation facility with both indoor and outdoor cultivation areas, except that, for a tier 4 cultivation facility license for which an increased amount of licensed plant canopy has been approved by the department pursuant to section 304, for each approved increase in the amount of licensed plant canopy, the department may increase the maximum license fee by not more than \$5,000 for an outdoor cultivation facility and by not more than \$10,000 for an indoor cultivation facility or a cultivation facility with both indoor and outdoor cultivation areas; and

E. For a nursery cultivation facility license, as described in section 301, subsection 5, an application fee of \$60 and a license fee of \$350.

2. Fees for products manufacturing facilities and marijuana stores. For a products manufacturing facility license or a marijuana store license, the department shall require payment of an application fee of \$250 and a license fee of not more than \$2,500.

3. Fees for testing facilities. For a testing facility license, the department shall require payment of an application fee of \$250 and a license fee of not more than \$1,000.

4. Payment of fees; fees to be deposited into Adult Use Marijuana Regulatory Coordination Fund. An applicant shall pay the application fee required by the department at the time that the applicant submits an application for licensure to the department

for processing. An applicant shall pay the license fee required by the department in accordance with section 205, subsection 4. All fees collected by the department pursuant to this section must be deposited into the Adult Use Marijuana Regulatory Coordination Fund established in section 1102.

5. Return of fees prohibited. The department may not return to an applicant or licensee or reimburse an applicant or licensee for any portion of an application or license fee paid by the applicant or licensee, regardless of whether the applicant withdraws its application prior to a final decision of the department on the application, the licensee voluntarily terminates its license pursuant to section 212 or the department suspends or revokes the licensee's license in accordance with the provisions of subchapter 8.

§208. License term

An active license issued by the department pursuant to section 205, subsection 4 is effective for a period of one year from the date of issuance and may be renewed pursuant to section 209.

§209. License renewal

1. Notification of expiration date. Ninety days prior to the expiration of an existing license issued under section 205, subsection 4, the department shall notify the licensee of the expiration date and the opportunity for renewal. Except as otherwise provided in this section, a licensee seeking to renew an existing license must file an application for renewal with the department, on forms prepared and furnished by the department, not less than 30 days prior to the date of expiration of the license.

2. Extension for good cause shown; late applications. Notwithstanding subsection 1, the department may for good cause shown accept an application for renewal of an existing license less than 30 days prior to the date of expiration of the license upon the payment of a late application fee to the department. The department may not accept an application for renewal of a license after the date of expiration of that license.

3. Operation under expired license. A licensee that files an application for renewal of its existing license and pays all required fees under this section prior to the expiration of the license may continue to operate the marijuana establishment under that license notwithstanding its expiration until such time as the department takes final action on the renewal application, except when the department suspends or revokes the license in accordance with the provisions of subchapter 8 prior to taking final action on the renewal application.

4. Expired license; cessation of activity and forfeiture of marijuana and marijuana products. Except as provided in subsection 3, a person whose

license has expired shall immediately cease all activities relating to the operation of the marijuana establishment previously authorized under that license and ensure that all adult use marijuana and adult use marijuana products cultivated, manufactured or otherwise in the possession of the person pursuant to that license are forfeited to the department for destruction in accordance with section 803.

5. Renewal application process; fees; rules. An applicant seeking renewal of a license to operate a marijuana establishment must pay to the department a renewal application fee or, if applicable, a late renewal application fee, and must demonstrate continued compliance with all applicable licensing criteria under this chapter, including, but not limited to, obtaining local authorization as required by section 402, subsection 3, paragraph B or, in the case of a marijuana establishment located in the unorganized and deorganized areas, as required by section 403, subsection 3, paragraphs B and C, except that an applicant seeking renewal of a license is not required to submit to a criminal history record check under section 204 unless specifically required to do so by the department.

A. The department may not issue an active license to a licensee seeking renewal of a license until the licensee obtains local authorization as required by section 402, subsection 3, paragraph B or, in the case of a marijuana establishment located in the unorganized and deorganized areas, as required by section 403, subsection 3, paragraphs B and C, pays the applicable license fee required under section 207 and meets all other applicable requirements for the issuance of an active license under section 205, subsection 4.

B. The department shall by rule set forth requirements for the submission, processing and approval of a renewal application, which must include, but are not limited to, setting of a reasonable renewal application fee and a reasonable late renewal application fee.

§210. Transfer of ownership interests

1. Transfer application. A licensee may apply to the department, on forms prepared and furnished by the department, for approval to transfer ownership interests in the license, including, but not limited to, a transfer of only a portion of the ownership interests in the license.

2. Compliance with licensure requirements; rules. A person seeking to assume an ownership interest in a license pursuant to this section must demonstrate to the department compliance with all applicable requirements for licensure under this chapter and the rules adopted under this chapter. The department shall by rule adopt requirements for the submission of a license transfer application and standards for the approval of a license transfer application, including, but

not limited to, provisions relating to local authorization of a transfer of ownership interests in a license.

§211. Relocation of licensed premises

1. Relocation application. A licensee may apply to the department, on forms prepared and furnished by the department, for approval to relocate the licensed premises of the marijuana establishment that the licensee is licensed to operate.

2. Local authorization required. The department shall, within 10 days of receiving certification of local authorization pursuant to section 402, subsection 3, paragraph B from the municipality in which the relocated licensed premises are to be located or pursuant to section 403, subsection 3, paragraphs B and C from the Maine Land Use Planning Commission if the relocated licensed premises are to be located in the unorganized and deorganized areas, notify the licensee that local authorization has been confirmed for the relocation and that the licensee may proceed with relocation, and the department shall issue to the licensee an updated license specifying the address of the new premises.

3. Effect on license term. A relocation of licensed premises pursuant to this section does not extend or otherwise modify the license term of the license subject to relocation.

4. Rules. The department shall by rule adopt requirements for the submission of a license relocation application and standards for the approval of a relocation application.

§212. Termination of license

1. Notification of termination required. A licensee may not permanently abandon the licensed premises of the licensee or otherwise permanently cease all activities relating to the operation of the marijuana establishment under its license, whether voluntarily or pursuant to a license revocation in accordance with subchapter 8, without notifying the department and the municipality in which the licensed premises are located at least 48 hours in advance of the abandonment or termination.

2. Forfeiture and destruction of marijuana and marijuana products. Prior to abandoning the licensed premises of the licensee or terminating operations, a licensee shall provide the department and the municipality in which the licensed premises are located with a full accounting of all adult use marijuana and adult use marijuana products located within the licensed premises and forfeit the marijuana and marijuana products to the department for destruction in accordance with section 803.

For the purposes of this section, "municipality" means, in the case of a marijuana establishment not located in the unorganized and deorganized areas, the city, town or plantation in which the marijuana estab-

lishment is located; or, in the case of a marijuana establishment located in the unorganized and deorganized areas, the Maine Land Use Planning Commission and the town or plantation in which the marijuana establishment is located or, in the case of a marijuana establishment located in a township, the county commissioners of the county in which the township is located.

§213. Notice of new owner, officer, manager or employee

Before any proposed new owner, officer, manager or employee may own, manage, work for or otherwise associate with a licensee, the licensee shall notify the department in writing of the name, address and date of birth of the proposed new owner, officer, manager or employee and the proposed new owner, officer, manager or employee shall submit to a criminal history record check pursuant to section 204, obtain an individual identification card pursuant to section 106 and, in the case of a new owner or other person assuming an equity ownership interest or a partial equity ownership interest in the license, obtain approval for the transfer of ownership interests pursuant to section 210.

§214. Inactive licenses

The department may revoke or refuse to renew any license if it determines that the licensed premises have been inactive without reasonable justification for a period of one year or more.

§215. Notification to municipality; sharing of information with Bureau of Revenue Services

The department shall notify a municipality within 14 days of the date the department approves, renews, denies, suspends or revokes the license of a licensee whose licensed premises are located or proposed to be located in the municipality; imposes a monetary penalty on a licensee located within the municipality; approves relocation of the licensed premises of a marijuana establishment to or from the municipality; or approves a transfer of ownership interest in a license with respect to which the licensed premises are located within the municipality.

The department shall provide the Bureau of Revenue Services with the same information provided to a municipality under this section at the time that the department notifies the municipality.

For the purposes of this section, "municipality" has the same meaning as in section 212.

SUBCHAPTER 3
LICENSING REQUIREMENTS FOR
CULTIVATION FACILITIES

§301. Cultivation facility license types

Subject to the requirements and restrictions of this subchapter and the requirements of subchapter 2, the department may issue to an applicant any of the following types of cultivation facility licenses:

1. Tier 1 cultivation facility license. A tier 1 cultivation facility license, which allows cultivation by a licensee of:

A. Not more than 30 mature marijuana plants and an unlimited number of immature marijuana plants and seedlings; or

B. Not more than 500 square feet of plant canopy.

An applicant for a tier 1 cultivation facility license shall designate in its cultivation plan whether the license sought is a plant-count-based tier 1 cultivation facility license under paragraph A or a plant-canopy-based tier 1 cultivation facility license under paragraph B.

2. Tier 2 cultivation facility license. A tier 2 cultivation facility license, which allows cultivation by a licensee of not more than 2,000 square feet of plant canopy;

3. Tier 3 cultivation facility license. A tier 3 cultivation facility license, which allows cultivation by a licensee of not more than 7,000 square feet of plant canopy;

4. Tier 4 cultivation facility license. A tier 4 cultivation facility license, which allows cultivation by a licensee of not more than 20,000 square feet of plant canopy, except as provided in section 304; or

5. Nursery cultivation facility license. A nursery cultivation facility license, which allows cultivation by a licensee of not more than 1,000 square feet of plant canopy, subject to the requirements and restrictions of section 501, subsection 3.

§302. Additional information required for application for cultivation facility license

In addition to the information required to be submitted to the department pursuant to subchapter 2 and the rules relating to licensure of a cultivation facility adopted pursuant to this chapter, an applicant for a cultivation facility license shall submit to the department the following information.

1. Operating plan. The applicant shall submit an operating plan demonstrating the proposed size and layout of the cultivation facility; plans for wastewater and waste disposal for the cultivation facility; plans for providing electricity, water and other utilities neces-

sary for the normal operation of the cultivation facility; plans for securing the proposed facility and otherwise meeting applicable security requirements under this chapter and the rules adopted pursuant to this chapter; and plans for compliance with applicable building code and federal and state environmental requirements.

2. Cultivation plan. The applicant shall submit a cultivation plan demonstrating the proposed size and layout of the cultivation areas at the cultivation facility and designating:

A. The total amount of plant canopy or, in the case of a plant-count-based tier 1 cultivation facility license, the number of mature marijuana plants proposed under the license;

B. The total percentage or square footage of plant canopy designated under paragraph A, or, in the case of a plant-count-based tier 1 cultivation facility license, the areas within the cultivation facility within which the applicant proposes to cultivate mother plants, seedlings and immature marijuana plants. If the applicant does not intend to cultivate mother plants, seedlings or immature marijuana plants at any time within any portion of the plant canopy designated under paragraph A, the applicant shall state that intent on the cultivation plan and shall include in the plan information regarding the approximate square footage of the cultivation areas outside of the plant canopy but within the proposed licensed premises of the cultivation facility in which the applicant intends to cultivate mother plants, seedlings and immature marijuana plants; and

C. The total percentage or square footage of plant canopy designated under paragraph A, or, in the case of a plant-count-based tier 1 cultivation facility license, the areas within the cultivation facility, within which the applicant proposes to cultivate mature marijuana plants. An applicant for a nursery cultivation facility license shall meet the requirements of this paragraph by designating on the cultivation plan the areas within the cultivation facility within which the applicant proposes to cultivate mature marijuana plants, demonstrating the physical separation of such areas from the areas in which immature marijuana plants and seedlings are to be cultivated in accordance with section 501, subsection 3, paragraph B.

§303. Increase in cultivation tier upon renewal

A licensee seeking renewal of a cultivation facility license may, if applicable and in accordance with this section, apply for a tier of cultivation facility license with a greater area of authorized plant canopy than is authorized under the licensee's current cultivation facility license.

1. Approval criteria. The department may issue the applied-for tier of cultivation facility license if the licensee otherwise meets all applicable requirements for continued licensure under this chapter and the rules adopted pursuant to this chapter and the licensee has demonstrated to the department's satisfaction that:

A. The licensee has over the current period of licensure sold at least 85% of the adult use marijuana cultivated by the licensee at its cultivation facility; and

B. The approval of the applied-for tier of cultivation facility license will not cause the licensee to exceed the combined plant canopy limitation in section 205, subsection 2, paragraph A.

2. Consideration of renewal of current license tier if approval criteria not met. If the department determines that the licensee has failed to satisfy the requirements of this section for the applied-for tier of cultivation facility license, the department shall consider renewing the licensee's license at the current tier.

This section does not apply to a nursery cultivation facility licensee.

§304. Increase in maximum licensed plant canopy upon renewal of tier 4 license

In accordance with the requirements of this section, not more than once every 2 years, a licensee seeking renewal of a tier 4 cultivation facility license may apply to increase by 7,000 square feet the maximum area of plant canopy authorized under its current tier 4 cultivation facility license.

1. Approval criteria. The department may approve the requested increase if the licensee otherwise meets all applicable requirements for continued licensure under this chapter and the rules adopted pursuant to this chapter and the licensee has demonstrated to the department's satisfaction that the licensee has over the past 2-year period of licensure sold at least 85% of the adult use marijuana cultivated by the licensee at its cultivation facility.

2. Consideration of renewal of current licensed amount of plant canopy if approval criteria not met. If the department determines that the licensee has failed to satisfy the requirements of this section for the requested increase, the department shall consider renewing the licensee's license at the current tier and currently authorized maximum area of plant canopy.

SUBCHAPTER 4

LOCAL REGULATION OF MARIJUANA ESTABLISHMENTS

§401. Municipal regulation of marijuana establishments generally

In accordance with the applicable provisions of this subchapter and pursuant to the home rule authority

granted under the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, a municipality may regulate marijuana establishments within the municipality, including, but not limited to, adoption of the following types of regulations and restrictions.

1. Land use regulations. A municipality may adopt an ordinance providing land use regulations applicable to marijuana establishments within the municipality.

2. General authorization or limitation of marijuana establishments. A municipality may adopt an ordinance generally authorizing the operation of some or all types of marijuana establishments within the municipality. A municipality may adopt an ordinance limiting the number of any type of marijuana establishment that may be authorized to operate within the municipality.

3. Municipal licensing requirements. A municipality may adopt an ordinance providing licensing requirements applicable to marijuana establishments within the municipality, which may include, but are not limited to, provisions establishing a municipal licensing fee schedule pursuant to Title 30-A, section 3702.

Notwithstanding any other provision of law to the contrary, a municipal ordinance regulating marijuana establishments within the municipality adopted pursuant to this subchapter is not subject to the requirements or limitations of Title 7, chapter 6 or 8-F.

§402. Local authorization of marijuana establishments within municipalities

1. Request for local authorization to operate marijuana establishment in municipality prohibited unless authorized by municipal ordinance or warrant article. A person seeking to operate a marijuana establishment within a municipality may not request local authorization to operate the marijuana establishment pursuant to subsection 3 and a municipality may not accept as complete the person's request for local authorization unless:

A. The legislative body of the municipality has voted to adopt a new ordinance, amend an existing ordinance or approve a warrant article allowing some or all types of marijuana establishments within the municipality, including the type of marijuana establishment the person seeks to operate; and

B. The person has been issued by the department a conditional license to operate the marijuana establishment pursuant to section 205, subsection 3.

2. Minimum authorization criteria. A municipality may not authorize the operation of a marijuana establishment within the municipality if:

A. The marijuana establishment is proposed to be located within 1,000 feet of the property line of a preexisting public or private school, except that, if a municipality by ordinance or other regulation prohibits the location of marijuana establishments at distances less than 1,000 feet but not less than 500 feet from the property line of a preexisting public or private school, that lesser distance applies. For the purposes of this paragraph, "school" includes a public school, as defined in Title 20-A, section 1, subsection 24, a private school, as defined in Title 20-A, section 1, subsection 22, a public preschool program, as defined in Title 20-A, section 1, subsection 23-A or any other educational facility that serves children from pre-kindergarten to grade 12; or

B. The person requesting local authorization to operate the marijuana establishment fails to demonstrate possession or entitlement to possession of the proposed licensed premises of the marijuana establishment pursuant to a lease, rental agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.

3. Local authorization required for operation of marijuana establishment within municipality. A person may not operate a marijuana establishment within a municipality unless:

A. The legislative body of the municipality has voted to adopt a new ordinance, amend an existing ordinance or approve a warrant article allowing some or all types of marijuana establishments within the municipality, including that type of marijuana establishment;

B. The person has obtained all applicable municipal approvals, permits or licenses that are required by the municipality for the operation of that type of marijuana establishment; and

C. The person has been issued by the department an active license to operate the marijuana establishment pursuant to section 205, subsection 4.

A municipality may certify to the department a person's compliance with the requirements of paragraph B on the form prepared and furnished by the department pursuant to section 205, subsection 4, paragraph B.

4. Municipal failure to act on request for local authorization. If a municipality whose legislative body has voted to adopt a new ordinance, amend an existing ordinance or approve a warrant article allowing some or all types of marijuana establishments within the municipality fails to act on a person's request for local authorization to operate a marijuana establishment within the municipality, the municipality's failure to act does not satisfy the local authorization requirement of subsection 3, paragraph B.

5. Appeal of municipal failure to act on request for local authorization. If a municipality whose legislative body has voted to adopt a new ordinance, amend an existing ordinance or approve a warrant article allowing some or all types of marijuana establishments within the municipality fails to act on a person's request for local authorization to operate a marijuana establishment within the municipality within 90 days after the date the person submitted the request to the municipality, the request is deemed denied and the denial constitutes a final government action that may be appealed to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure, except that, if the municipality notifies the person in writing prior to the expiration of the 90-day period that the request cannot be processed prior to the expiration of the 90-day period, the request is deemed denied and the denial constitutes a final government action only if the municipality fails to act on the request within 180 days after the date the person submitted the request to the municipality.

§403. Local authorization of marijuana establishments within towns, plantations and townships in the unorganized and deorganized areas

1. Request for local authorization to operate marijuana establishment in town, plantation or township in unorganized and deorganized areas prohibited unless generally allowed by town or plantation or by county commissioners on behalf of township. A person seeking to operate a marijuana establishment within a town, plantation or township located within the unorganized and deorganized areas may not request local authorization pursuant to subsection 3 to operate the marijuana establishment and the town, plantation or, in the case of a township, the county commissioners of the county in which the township is located may not accept as complete the person's request for local authorization unless:

A. In the case of a town or plantation, the legislative body of the town or plantation has voted to allow some or all types of marijuana establishments within the town or plantation, including the type of marijuana establishment the person seeks to operate and the person has been issued by the department a conditional license to operate the marijuana establishment pursuant to section 205, subsection 3; or

B. In the case of a township, the county commissioners of the county in which the township is located have voted to allow some or all types of marijuana establishments within the township, including the type of marijuana establishment the person seeks to operate and the person has been issued by the department a conditional license to operate the marijuana establishment pursuant to section 205, subsection 3.

2. Minimum authorization criteria. The Maine Land Use Planning Commission may not certify to the department local authorization of a marijuana establishment within a town, plantation or township located within the unorganized and deorganized areas pursuant to subsection 3 if:

A. The marijuana establishment is proposed to be located within 1,000 feet of the property line of a preexisting public or private school, except that, if the Maine Land Use Planning Commission prohibits the location of marijuana establishments within a town, plantation or township at distances less than 1,000 feet but not less than 500 feet from the property line of a preexisting public or private school, that lesser distance applies. For the purposes of this paragraph, "school" has the same meaning as in section 402, subsection 2, paragraph A; or

B. The person requesting local authorization to operate the marijuana establishment fails to demonstrate possession or entitlement to possession of the proposed licensed premises of the marijuana establishment pursuant to a lease, rental agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.

3. Local authorization required for operation of marijuana establishment in town, plantation or township in unorganized and deorganized areas. A person may not operate a marijuana establishment within a town, plantation or township located within the unorganized and deorganized areas unless:

A. The legislative body of the town or plantation has voted to allow some or all types of marijuana establishments within the town or plantation, including that type of marijuana establishment, or, in the case of a township, the county commissioners of the county in which the township is located have voted to allow some or all types of marijuana establishments within the township, including that type of marijuana establishment;

B. The person has obtained all applicable local approvals, permits or licenses not relating to land use planning and development that are required for the operation of the marijuana establishment by the town, plantation or, in the case of a township, the county commissioners of the county in which the township is located;

C. The person has obtained all applicable approvals, permits or licenses relating to land use planning and development that are required by the Maine Land Use Planning Commission for the development and operation of the marijuana establishment; and

D. The person has been issued by the department an active license to operate the marijuana establishment pursuant to section 205, subsection 4.

The town, plantation or, in the case of a township, the county commissioners of the county in which the township is located, shall certify to the Maine Land Use Planning Commission that the person has obtained all applicable local approvals, permits or licenses not relating to land use planning and development as required under paragraph B. The Maine Land Use Planning Commission may certify to the department a person's compliance with the requirements of paragraphs B and C on the form prepared and furnished by the department pursuant to section 205, subsection 4, paragraph B.

4. Failure to act on request for local authorization. This subsection governs a failure to act on a request for local authorization by a town or a plantation or, in the case of a township, by the county commissioners of the county in which the township is located, or by the Maine Land Use Planning Commission.

A. If a town or plantation whose legislative body has voted to allow some or all types of marijuana establishments within the town or plantation fails to act on a person's request for local authorization under subsection 3, paragraph B, the town or plantation's failure to act does not satisfy the local authorization requirement of subsection 3, paragraph B.

B. If the county commissioners of the county in which a township is located, who have voted to allow some or all types of marijuana establishments within the township, fail to act on a person's request for local authorization under subsection 3, paragraph B, the county commissioners' failure to act does not satisfy the local authorization requirement of subsection 3, paragraph B.

C. If the Maine Land Use Planning Commission fails to act on a person's request for local authorization under subsection 3, paragraph C, the commission's failure to act does not satisfy the local authorization requirement of subsection 3, paragraph C.

5. Appeal of failure to act on request for local authorization. This subsection governs the appeal of a failure to act on a request for local authorization by a town or a plantation or, in the case of a township, by the county commissioners of the county in which the township is located, or by the Maine Land Use Planning Commission.

A. If a town or plantation whose legislative body has voted to allow some or all types of marijuana establishments within the town or plantation fails to act on a person's request for local authorization under subsection 3, paragraph B within 90 days

after the date the person submitted the request to the town or plantation, the request is deemed denied and the denial constitutes a final government action that may be appealed to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure, except that, if the town or plantation notifies the person in writing prior to the expiration of the 90-day period that the request cannot be processed prior to the expiration of the 90-day period, the request is deemed denied and the denial constitutes a final government action only if the town or plantation fails to act on the request within 180 days after the date the person submitted the request to the town or plantation.

B. If the county commissioners of the county in which a township is located, who have voted to allow some or all types of marijuana establishments within the township, fail to act on a person's request for local authorization under subsection 3, paragraph B within 90 days after the date the person submitted the request to the county commissioners, the request is deemed denied and the denial constitutes a final government action that may be appealed to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure, except that, if the county commissioners notify the person in writing prior to the expiration of the 90-day period that the request cannot be processed prior to the expiration of the 90-day period, the request is deemed denied and the denial constitutes a final government action only if the county commissioners fail to act on the request within 180 days after the date the person submitted the request to the county commissioners.

C. If the Maine Land Use Planning Commission fails to act on a person's request for local authorization under subsection 3, paragraph C within 90 days after the date the person submitted the request to the commission, the request is deemed denied and the denial constitutes a final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure, except that, if the commission notifies the person in writing prior to the expiration of the 90-day period that the request cannot be processed prior to the expiration of the 90-day period, the request is deemed denied and the denial constitutes a final agency action only if the commission fails to act on the request within 180 days after the date the person submitted the request to the commission.

§404. Authority of Maine Land Use Planning Commission

This chapter or rules adopted pursuant to this chapter may not be construed to limit the authority of

the Maine Land Use Planning Commission to regulate land use planning and development activities within the unorganized and deorganized areas of the State pursuant to Title 12, chapter 206-A.

§405. Information requests

A municipality may request that the department provide any information obtained by the department pursuant to the provisions of subchapter 2 or 3 that the municipality determines necessary for the administration of its local authorization process for marijuana establishments under this subchapter. Unless the information is confidential pursuant to law or rule, the department, in a timely manner, shall provide the information requested pursuant to this section. For the purposes of this section, "municipality" has the same meaning as in section 212.

§406. Notification to department

A municipality shall notify the department within 14 days of the date the municipality authorizes the operation of a marijuana establishment within the municipality; issues or renews a license for the operation of a marijuana establishment within the municipality; withdraws authorization or suspends or revokes a license for the operation of a marijuana establishment within the municipality; approves relocation of the licensed premises of a marijuana establishment to the municipality; or approves a transfer of ownership interests in a license the licensed premises of which are located within the municipality. For the purposes of this section, "municipality" has the same meaning as in section 212.

The department shall provide the Bureau of Revenue Services with any information received pursuant to this section within 14 days of the date the department receives that information.

SUBCHAPTER 5

OPERATING REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS

§501. Operation of cultivation facilities

A cultivation facility must be operated in accordance with the provisions of this section and the rules adopted pursuant to this chapter.

1. Cultivation of adult use marijuana only for sale and distribution to other licensees. Except as otherwise provided in this section, a cultivation facility may cultivate adult use marijuana only for sale and distribution to products manufacturing facilities, marijuana stores or other cultivation facilities.

2. Retail sale of adult use marijuana without separate marijuana store license prohibited. Except as provided in subsection 3, a cultivation facility may not sell or offer to sell adult use marijuana, immature marijuana plants or seedlings to consumers unless the cultivation facility licensee obtains from the de-

partment a separate license to operate a marijuana store and otherwise complies with all applicable requirements under this chapter and the rules adopted pursuant to this chapter concerning the operation of marijuana stores. A cultivation facility may not give away adult use marijuana, adult use marijuana products or marijuana plants to a consumer.

3. Operation of nursery cultivation facilities.

A nursery cultivation facility as described in section 301, subsection 5 must be operated in accordance with the provisions of this subsection and must comply with all other applicable requirements of this chapter and the rules adopted pursuant to this chapter.

A. A nursery cultivation facility may cultivate immature marijuana plants, seedlings and marijuana seeds only for sale and distribution to marijuana stores and to other cultivation facilities pursuant to paragraph C and to consumers pursuant to paragraph D.

B. A nursery cultivation facility may cultivate mature marijuana plants only for the propagation of those mature marijuana plants or for the production of marijuana seeds by those mature marijuana plants, but the area within a nursery cultivation facility in which mature marijuana plants are cultivated must be physically separated from the area within the facility in which immature marijuana plants and seedlings are cultivated. A nursery cultivation facility may not sell, distribute or otherwise transfer to any person mature marijuana plants, marijuana flower or marijuana trim.

C. A nursery cultivation facility may sell and distribute to marijuana stores and other cultivation facilities only immature marijuana plants, seedlings and marijuana seeds. Adult use marijuana sold by a nursery cultivation facility to marijuana stores and other cultivation facilities is subject to the excise tax imposed pursuant to subchapter 10, which must be paid to the department as required by subsection 9.

D. A nursery cultivation facility may sell to consumers only immature marijuana plants, seedlings, marijuana seeds and agricultural or gardening supplies relating to the cultivation of marijuana. Sales to consumers by a nursery cultivation facility:

(1) Must be conducted within a portion of the licensed premises of the nursery cultivation facility that is dedicated to consumer sales of immature marijuana plants, seedlings, marijuana seeds and agricultural or gardening supplies relating to the cultivation of marijuana. A nursery cultivation facility licensee shall ensure that the portion of the licensed premises of the nursery cultivation facility that is dedicated to consumer sales complies

with all applicable requirements of this chapter and the rules adopted pursuant to this chapter concerning the operation of marijuana stores; and

(2) Are subject to the sales tax imposed pursuant to Title 36, section 1811 and must be collected and remitted as required by subsection 9.

E. The department shall adopt rules regulating the operation of nursery cultivation facilities.

4. Marijuana extraction without separate products manufacturing facility license prohibited.

A cultivation facility may not engage in the manufacture of marijuana concentrate by marijuana extraction unless the cultivation facility licensee has obtained from the department a separate license to operate a products manufacturing facility and otherwise meets the requirements under this chapter and the rules adopted pursuant to this chapter concerning the operation of a products manufacturing facility and concerning marijuana extraction.

5. Use of shared facility for cultivation of adult use marijuana and marijuana for medical use.

Subject to the requirements of this subsection and the rules adopted pursuant to this subsection, a cultivation facility licensee that is also a registered primary caregiver or a registered dispensary may cultivate adult use marijuana pursuant to this chapter within the same facility in which the licensee also cultivates marijuana for medical use pursuant to the Maine Medical Use of Marijuana Act.

A. A cultivation facility licensee that cultivates marijuana under this subsection must comply with all applicable requirements of this chapter and the rules adopted pursuant to this chapter concerning the operation of cultivation facilities.

B. Except as provided in paragraph C, the areas of the shared facility in which adult use marijuana is cultivated must be separated from the areas of the shared facility in which marijuana for medical use is cultivated in a manner that provides for a visually conspicuous delineation of the physical space between the cultivation area for adult use marijuana and the cultivation area for marijuana for medical use.

C. The following items or areas within the shared facility may be shared for both the cultivation of adult use marijuana and the cultivation of marijuana for medical use:

(1) Cultivation-related and noncultivation-related equipment, except that cultivation-related equipment may not be simultaneously used for the cultivation of adult use marijuana and the cultivation of marijuana for medical use;

(2) Cultivation-related and noncultivation-related supplies or products not containing marijuana or marijuana products and the storage areas for those supplies or products; and

(3) General office space, bathrooms, entryways and walkways.

D. Each marijuana plant within the shared facility must be tagged or otherwise identified as an adult use marijuana plant or a marijuana plant for medical use.

E. The department shall adopt rules governing the use of a shared facility by a cultivation facility licensee that is also a registered primary caregiver or a registered dispensary, which must include, but are not limited to, requirements for the maintenance of a log or other record relating to the use of the shared facility space, shared equipment and shared supplies or products to ensure compliance with the requirements of this chapter and the rules adopted pursuant to this chapter and the requirements of the Maine Medical Use of Marijuana Act.

6. Limited authorization for sale of marijuana plants and marijuana seeds by registered primary caregiver or registered dispensary to cultivation facility licensee. Notwithstanding any other provision of law to the contrary and subject to the requirements and restrictions of this section, for a period starting on the date that the department issues the first active cultivation facility license under section 205, subsection 4 and ending 2 years after that date, a registered primary caregiver or a registered dispensary may sell marijuana plants and marijuana seeds to a cultivation facility licensee that is also a registered primary caregiver or a registered dispensary and a cultivation facility licensee that is also a registered primary caregiver or a registered dispensary may purchase marijuana plants and marijuana seeds from a registered primary caregiver or a registered dispensary. The department shall post on its publicly accessible website information regarding the date on which the department issues the first active cultivation facility license and the date that is 2 years after the date the first active cultivation facility license is issued.

A. Beginning on the date that the department issues the first active cultivation facility license and ending 2 years after that date, in an active cultivation facility license issued to any licensee that has demonstrated to the department's satisfaction that the licensee is also a registered primary caregiver or a registered dispensary, the department shall include language authorizing the licensee, at any time within the licensee's first year of licensure, to purchase an unlimited number of marijuana plants and marijuana seeds from registered primary caregivers and registered dispensaries. This au-

thorization may not be included in any license issued upon renewal under section 209.

B. A cultivation facility licensee authorized pursuant to paragraph A to purchase marijuana plants and marijuana seeds from registered primary caregivers and registered dispensaries that transacts such a purchase shall pay to the department the excise taxes that would have been imposed under subchapter 10 on the sale of the marijuana plants and marijuana seeds if the marijuana plants and marijuana seeds had been sold by a cultivation facility licensee to another licensee. In addition to payment of the required excise taxes under this paragraph, the cultivation facility licensee shall provide the department with an accounting of the transaction, which must include information on the registered primary caregiver or registered dispensary from which the licensee purchased the marijuana plants and marijuana seeds, the number of mature marijuana plants, immature marijuana plants, seedlings and marijuana seeds purchased in the transaction and any other information required by the department by rule.

C. A cultivation facility licensee authorized pursuant to paragraph A to purchase marijuana plants and marijuana seeds from registered primary caregivers and registered dispensaries may purchase marijuana plants and marijuana seeds from more than one registered primary caregiver or registered dispensary and may transact more than one purchase of marijuana plants and marijuana seeds from a registered primary caregiver or registered dispensary. A registered primary caregiver or registered dispensary may not sell marijuana plants and marijuana seeds to more than one cultivation facility licensee authorized pursuant to paragraph A to purchase marijuana plants and marijuana seeds from registered primary caregivers and registered dispensaries and may not transact more than one sale of marijuana plants and marijuana seeds to a cultivation facility licensee authorized to make such purchases pursuant to paragraph A.

D. A cultivation facility licensee that violates this subsection or the rules adopted pursuant to this subsection is subject to the imposition by the department of monetary penalties, a license revocation or suspension and an order directing the destruction of unauthorized marijuana plants and marijuana seeds pursuant to subchapter 8 in addition to any criminal or civil penalties that may be imposed pursuant to other applicable laws or rules. A registered primary caregiver or registered dispensary that violates paragraph C is subject to the revocation of its registration or other applicable penalty under the Maine Medical Use of Marijuana Act in addition to any criminal or civil penalties that may be imposed pursuant to other applicable laws or rules.

The department shall adopt rules to implement this subsection.

7. Requirements for outdoor cultivation. This subsection governs outdoor cultivation operations by a cultivation facility licensee.

A. An outdoor cultivation area within the licensed premises of a cultivation facility may not share a common wall or fence with an outdoor cultivation area within the licensed premises of a different cultivation facility.

B. The outer boundary of an outdoor cultivation area within the licensed premises of a cultivation facility must be separated by at least 20 feet from the outer boundary of an outdoor cultivation area within the licensed premises of a different cultivation facility.

C. The department shall adopt rules regarding the outdoor cultivation of adult use marijuana by a cultivation facility licensee, including, but not limited to, security requirements specific to outdoor cultivation operations and requirements for shielding outdoor cultivation operations from public view.

8. Sampling by other licensees. A cultivation facility licensee may provide samples of adult use marijuana cultivated at the licensed premises to a products manufacturing facility licensee or a marijuana store licensee for business or marketing purposes only. Samples provided by a cultivation facility licensee to another licensee under this subsection may not be consumed within the licensed premises of the cultivation facility. This subsection does not apply to a nursery cultivation facility licensee.

9. Excise tax; sales tax. A cultivation facility licensee shall ensure that the tax imposed on the sale of adult use marijuana by a cultivation facility to other licensees pursuant to subchapter 10 is paid to the department. A nursery cultivation facility licensee shall ensure that the tax imposed on the sale of adult use marijuana and adult use marijuana products under Title 36, section 1811 is collected and remitted in accordance with the requirements of Title 36, Part 3 and the rules adopted pursuant to Title 36, Part 3.

10. Tracking. In accordance with the requirements of section 105, a cultivation facility licensee shall track the adult use marijuana it cultivates from immature marijuana plant to the point at which the marijuana plant or the marijuana produced by the marijuana plant is delivered or transferred to a products manufacturing facility, a testing facility, a marijuana store or another cultivation facility or is disposed of or destroyed.

§502. Operation of products manufacturing facilities

A products manufacturing facility must be operated in accordance with the provisions of this section and the rules adopted pursuant to this chapter.

1. Manufacture only for sale or distribution to other licensees. Except as otherwise provided in this section, a products manufacturing facility may manufacture adult use marijuana and adult use marijuana products only for sale or distribution to marijuana stores or other products manufacturing facilities.

2. Retail sale of adult use marijuana or adult use marijuana products without separate marijuana store license prohibited. A products manufacturing facility may not sell or offer to sell adult use marijuana or adult use marijuana products to consumers unless the products manufacturing facility licensee obtains from the department a separate license to operate a marijuana store and otherwise complies with all applicable requirements under this chapter and the rules adopted pursuant to this chapter concerning the operation of marijuana stores. A products manufacturing facility may not give away adult use marijuana, adult use marijuana products or marijuana plants to a consumer.

3. Cultivation of marijuana without separate cultivation facility license prohibited. A products manufacturing facility shall purchase all marijuana necessary for its manufacturing processes from a cultivation facility and may not engage in the cultivation of marijuana unless the products manufacturing facility licensee obtains from the department a separate license to operate a cultivation facility and otherwise meets all applicable requirements under this chapter and under the rules adopted pursuant to this chapter concerning the operation of cultivation facilities.

4. Use of shared facility for manufacture of adult use marijuana products and marijuana products for medical use. Subject to the requirements of this subsection and the rules adopted pursuant to this subsection, a products manufacturing facility licensee that is also a registered primary caregiver or a registered dispensary may manufacture adult use marijuana and adult use marijuana products pursuant to this chapter within the same facility in which the licensee also manufactures marijuana concentrate and marijuana products for medical use pursuant to the Maine Medical Use of Marijuana Act.

A. A products manufacturing facility licensee that manufactures adult use marijuana and adult use marijuana products within the same facility in which the licensee also manufactures marijuana concentrate and marijuana products for medical use must comply with all applicable requirements of this chapter and the rules adopted pursuant to

this chapter concerning the operation of products manufacturing facilities.

B. The following items or areas within the shared facility may be shared for both the manufacturing of adult use marijuana and adult use marijuana products and the manufacturing of marijuana concentrate and marijuana products for medical use:

(1) Manufacturing-related and nonmanufacturing-related equipment, except that manufacturing-related equipment may not be simultaneously used for the manufacturing of adult use marijuana and adult use marijuana products and the manufacturing of marijuana concentrate and marijuana products for medical use;

(2) Manufacturing-related and nonmanufacturing-related supplies or products not containing marijuana or marijuana products and the storage areas for those supplies or products; and

(3) General office space, bathrooms, entryways and walkways.

C. The department shall adopt rules governing the use of a shared facility by a products manufacturing facility licensee that is also a registered primary caregiver or a registered dispensary, including, but not limited to, requirements for the maintenance of a log or other record relating to the use of the shared facility space, shared equipment and shared supplies or products to ensure compliance with the requirements of this chapter and the rules adopted pursuant to this chapter and the requirements of the Maine Medical Use of Marijuana Act.

5. Sampling by employees. A products manufacturing facility licensee and its employees may sample adult use marijuana and adult use marijuana products manufactured at the licensed premises of the products manufacturing facility for the purposes of product quality control and product research and development only. The licensee may not otherwise allow the consumption of adult use marijuana or adult use marijuana products within the licensed premises. The sampling of adult use marijuana and adult use marijuana products authorized under this subsection may not involve the consumption of marijuana or marijuana products by means of smoking the marijuana or marijuana products. For the purposes of this subsection, "smoking" has the same meaning as in Title 22, section 1541, subsection 6.

6. Sampling by other licensees. A products manufacturing facility licensee may provide samples of adult use marijuana and adult use marijuana products manufactured at the licensed premises to another products manufacturing facility licensee or to a marijuana store licensee for business or marketing pur-

poses only. Samples provided by a products manufacturing facility to other licensees under this subsection may not be consumed within the licensed premises of the products manufacturing facility.

7. Marijuana extraction. Subject to the requirements and restrictions of this subsection, a products manufacturing facility licensee may manufacture marijuana concentrate by marijuana extraction using water, lipids, gases, solvents or other chemicals or chemical processes.

A. A products manufacturing facility licensee may engage in marijuana extraction using a solvent or other chemical or chemical process that is not and does not involve an inherently hazardous substance if:

(1) The solvent or other chemical or chemical process is listed by the department by rule as approved for use in marijuana extraction; or

(2) The products manufacturing facility licensee requests and obtains from the department written approval to engage in marijuana extraction using a solvent or other chemical or chemical process that is not and does not involve an inherently hazardous substance and that is not listed by the department by rule as approved for use in marijuana extraction.

The department shall adopt by rule a list of those solvents or other chemicals or chemical processes that are not and do not contain an inherently hazardous substance that the department approves for use in marijuana extraction by products manufacturing facilities.

B. A products manufacturing facility licensee may not engage in marijuana extraction involving the use of any inherently hazardous substance unless:

(1) The licensee submits to the department a request for approval of the marijuana extraction method the facility plans to engage in that includes a description of the proposed marijuana extraction method and a certification from an industrial hygienist or professional engineer following a review of the facility's storage, preparation, electrical, gas monitoring, fire suppression and exhaust systems; and

(2) The department approves in writing the proposed marijuana extraction method.

The department, within 14 days of receipt of a request for approval under this paragraph, shall notify the products manufacturing facility licensee in writing whether the request is approved or denied.

8. Compliance with packaging, labeling and health and safety requirements. All adult use marijuana and adult use marijuana products sold or distributed by a products manufacturing facility must meet all applicable packaging, labeling and health and safety requirements of subchapter 7 and the rules adopted pursuant to subchapter 7.

9. Compliance with sanitary standards. All areas within the licensed premises of a products manufacturing facility in which adult use marijuana and adult use marijuana products are manufactured must meet all sanitary standards specified in rules adopted by the department.

10. Commercial kitchen license. A products manufacturing facility licensee must obtain a commercial kitchen license for any area within the licensed premises of the products manufacturing facility in which adult use marijuana and adult use marijuana products are manufactured and for which the department requires a products manufacturing facility licensee to obtain a commercial kitchen license. The department shall adopt rules requiring certain areas within the licensed premises of a products manufacturing facility to be licensed as commercial kitchens based upon the types of manufacturing processes conducted within those areas.

11. Refrigeration. A products manufacturing facility licensee shall store and transport in a refrigerated environment all adult use marijuana and adult use marijuana products that require refrigeration to prevent spoilage. The department shall adopt rules regarding the storage and transportation of adult use marijuana and adult use marijuana products that require refrigeration to prevent spoilage.

12. Testing. A products manufacturing facility licensee may test marijuana and marijuana products within its licensed premises for research and development purposes, quality control purposes and health and safety purposes. Testing performed by a products manufacturing facility licensee within its licensed premises is not subject to the requirements for testing facilities under section 503 but does not satisfy the mandatory testing requirements of subchapter 6.

13. Tracking. In accordance with the requirements of section 105, a products manufacturing facility licensee shall track the adult use marijuana it uses in its manufacturing processes from the point the marijuana is delivered or transferred to the products manufacturing facility by a cultivation facility to the point the marijuana or marijuana concentrate or an adult use marijuana product produced using the marijuana or marijuana concentrate is delivered or transferred to another products manufacturing facility, a testing facility or a marijuana store or is disposed of or destroyed.

§503. Operation of testing facilities

A testing facility must be operated in accordance with the provisions of this section and the rules adopted pursuant to this chapter.

1. Development, research and testing of marijuana, marijuana products and other substances. A testing facility may develop, research and test marijuana and marijuana products for:

- A. That facility;
- B. Another licensee;
- C. A person who intends to use the marijuana or marijuana product for personal use as authorized under chapter 3; or
- D. A qualifying patient, a primary caregiver, a registered primary caregiver or a registered dispensary.

Neither this chapter nor the rules adopted pursuant to this chapter prevent a testing facility from developing, researching or testing substances that are not marijuana or marijuana products for that facility or for another person.

2. Certification; accreditation and provisional licensure; compliance with operational and technical requirements. A testing facility may not commence or continue operation unless the testing facility:

- A. Is certified for operation by the Department of Health and Human Services, Maine Center for Disease Control and Prevention, in accordance with rules adopted by the department after consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, which must allow for inspection of the proposed or operational testing facility by the department and the Department of Health and Human Services, Maine Center for Disease Control and Prevention;
- B. Except as otherwise provided in this paragraph, is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body or is certified, registered or accredited by an organization approved by the department. The department shall adopt rules regarding the scope of certification, registration or accreditation required for licensure of a testing facility.

- (1) The department may issue a full testing facility license to an applicant that meets all applicable requirements of this chapter and rules adopted pursuant to this chapter and that has obtained accreditation pursuant to standard ISO/IEC 17025 of the International Organization for Standardization from a 3rd-party accrediting body or that is certified, reg-

istered or accredited by an approved organization.

(2) The department may issue a provisional testing facility license to an applicant that otherwise meets all applicable requirements of this chapter and rules adopted pursuant to this chapter and that has applied for but not yet obtained accreditation from a 3rd-party accrediting body or that has applied for but not yet obtained certification, registration or accreditation from an approved organization. The department may not renew a provisional testing facility license more than once.

An active full or provisional testing facility license may not be issued by the department to an applicant until the applicant satisfies all applicable requirements of section 205, subsection 4; and

C. Is determined by the department to meet all operational and technical requirements for testing facilities under this chapter and the rules adopted under this chapter.

3. Compliance with testing protocols, standards and criteria. A testing facility shall follow all testing protocols, standards and criteria adopted by rule by the department for the testing of different forms of marijuana and marijuana products; determining batch size; sampling; testing validity; and approval and disapproval of tested marijuana and marijuana products.

4. Remediation and retesting. If a testing facility determines that a sample of adult use marijuana or an adult use marijuana product has failed a mandatory test required under section 602, the testing facility shall offer to the owner of that sample an opportunity for remediation and retesting in accordance with rules adopted by the department.

5. Record keeping. A testing facility shall maintain records of all business transactions and testing results in accordance with the record-keeping requirements of section 511 and section 602, subsection 2 and in accordance with applicable standards for licensing and accreditation under subsection 2 and testing protocols, standards and criteria adopted by the department under subsection 3.

6. Disposal of marijuana and marijuana products. A testing facility shall dispose of or destroy used, unused and waste marijuana and marijuana products in accordance with rules adopted by the department.

7. Notification of test results. A testing facility shall notify the department of test results in accordance with section 603.

8. Independence of testing facility interest. A person with an interest in a testing facility may not be a primary caregiver or a registered primary caregiver

or have an interest in a registered dispensary, a marijuana store license, a cultivation facility license or a products manufacturing facility license, but may hold or have an interest in multiple testing facility licenses. A person who is a primary caregiver or a registered primary caregiver or who has an interest in a registered dispensary, a marijuana store license, a cultivation facility license or a products manufacturing facility license may not have an interest in a testing facility license. As used in this subsection, "interest" has the same meaning as in section 205, subsection 2, paragraph B.

9. Tracking. In accordance with the requirements of section 105, a testing facility licensee shall track all adult use marijuana and adult use marijuana products it receives from a licensee for testing purposes from the point at which the marijuana or marijuana products are delivered or transferred to the testing facility to the point at which the marijuana or marijuana products are disposed of or destroyed.

10. Rules. The department shall adopt rules regarding the testing of marijuana and marijuana products by testing facilities pursuant to this chapter, including, but not limited to, rules establishing acceptable testing and research practices for testing facilities, including, but not limited to, provisions relating to testing practices, methods and standards; remediation and retesting procedures; quality control analysis; equipment certification and calibration; chemical identification; testing facility record-keeping, documentation and business practices; disposal of used, unused and waste marijuana and marijuana products; and reporting of test results. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§504. Operation of marijuana stores

A marijuana store must be operated in accordance with the provisions of this section and the rules adopted pursuant to this chapter.

1. Products authorized for sale. Except as provided in subsection 2, a marijuana store may sell:

A. Adult use marijuana, adult use marijuana products and marijuana paraphernalia;

B. Immature marijuana plants and seedlings;

C. Consumable products not containing marijuana, including, but not limited to, sodas, candies and baked goods; and

D. Any other nonconsumable products, including, but not limited to, apparel and marijuana-related products.

2. Prohibitions. A marijuana store may not:

A. Give away adult use marijuana, adult use marijuana products or marijuana plants or sell or give away mature marijuana plants or consumable

products containing tobacco or alcohol that do not contain marijuana;

B. Except for nonedible adult use marijuana products that do not contain THC, sell to any person in any individual sales transaction an amount of adult use marijuana, adult use marijuana products or immature marijuana plants or seedlings that exceeds the personal adult use limitations of section 1501, subsection 1;

C. Sell adult use marijuana, adult use marijuana products or marijuana plants using:

- (1) An automated dispensing or vending machine;
- (2) A drive-through sales window;
- (3) An Internet-based sales platform; or
- (4) A delivery service; or

D. Sell adult use marijuana or adult use marijuana products to a person who is visibly intoxicated.

3. Compliance with packaging, labeling and health and safety requirements. All adult use marijuana and adult use marijuana products sold or offered for sale at a marijuana store must meet all applicable packaging, labeling and health and safety requirements of subchapter 7 and the rules adopted under subchapter 7.

4. Verification of purchaser's age. A person must be 21 years of age or older to make a purchase in a marijuana store. A marijuana store may not sell any item to a person under 21 years of age.

A. Prior to initiating a sale, an employee of the marijuana store licensee shall verify that the purchaser has a valid government-issued photographic identification card, or other acceptable photographic identification, demonstrating that the purchaser is 21 years of age or older.

B. The department shall by rule determine the forms of photographic identification that a marijuana store licensee may accept when verifying a purchaser's age.

5. Prohibition on use of shared facility for retail sale of adult use marijuana and adult use marijuana products and marijuana and marijuana products for medical use. A marijuana store licensee that is also a registered primary caregiver or a registered dispensary may not sell or offer for sale to consumers adult use marijuana and adult use marijuana products pursuant to this chapter within the same facility or building in which the licensee also sells or offers for sale to qualifying patients marijuana and marijuana products for medical use pursuant to the Maine Medical Use of Marijuana Act.

6. Signs, marketing and advertising. All signs used by and all marketing and advertising conducted by or on behalf of a marijuana store must comply with the requirements of section 702 and the rules adopted pursuant to section 702.

7. Sales tax. A marijuana store licensee shall ensure that the tax imposed on the sale of adult use marijuana and adult use marijuana products to a consumer pursuant to Title 36, section 1811 is collected and remitted in accordance with the requirements of Title 36, Part 3 and the rules adopted pursuant to Title 36, Part 3.

8. Tracking. In accordance with the requirements of section 105, a marijuana store licensee shall track all adult use marijuana and adult use marijuana products from the point at which the marijuana or marijuana products are delivered or transferred to the marijuana store by a cultivation facility or a products manufacturing facility to the point at which the marijuana or marijuana products are sold to a consumer, delivered or transferred to a testing facility or disposed of or destroyed.

§505. Transportation of adult use marijuana and adult use marijuana products

A licensee and its employees may transport adult use marijuana and adult use marijuana products between the licensed premises of the licensee and the licensed premises of any other marijuana establishment. All transportation of adult use marijuana and adult use marijuana products must be documented by the licensee or an employee of the licensee in accordance with rules adopted by the department. The department shall adopt rules regarding the transportation of adult use marijuana and adult use marijuana products by licensees under this chapter.

§506. Employment of persons under 21 years of age prohibited

A licensee may not employ any person under 21 years of age.

§507. Entry into marijuana establishment by persons under 21 years of age prohibited

A person under 21 years of age may not enter the licensed premises of a marijuana establishment. A licensee shall ensure that persons under 21 years of age do not enter its licensed premises.

§508. Use of adult use marijuana and adult use marijuana products within licensed premises

1. Employee use of marijuana or marijuana products for medical use. A licensee may allow an employee who is a qualifying patient to privately consume marijuana and marijuana products for medical use within its licensed premises.

2. Employee use of adult use marijuana or adult use marijuana products. Except as otherwise provided in this chapter, a licensee may not allow an employee to consume adult use marijuana or adult use marijuana products within its licensed premises or while the employee is otherwise engaged in activities within the course and scope of employment.

3. Other use of adult use marijuana or adult use marijuana products. Except as otherwise provided in this chapter:

A. A person may not consume adult use marijuana or adult use marijuana products within the licensed premises of a marijuana establishment; and

B. A licensee may not allow any person to consume adult use marijuana or adult use marijuana products within its licensed premises.

§509. License to be conspicuously displayed

A licensee shall ensure that the licensee's license, or a copy of that license, is at all times conspicuously displayed within its licensed premises.

§510. Limited access areas

A person may not enter or remain in any limited access area unless the person displays an individual identification card issued by the department pursuant to section 106. A licensee shall ensure that all areas of ingress and egress to limited access areas within its licensed premises are conspicuously marked and that a person is not allowed to enter or remain in any limited access area without displaying the person's individual identification card issued by the department pursuant to section 106.

§511. Record keeping and inspection of records; audits

1. Record keeping; inspection of records. A licensee shall maintain a complete set of all records of the licensee's business transactions, which must be open to inspection and examination by the department upon demand and without notice during all business hours. Records must be maintained by a licensee at a minimum for a period comprising the current tax year and the 2 immediately preceding tax years.

2. Additional information may be required. The department may require a licensee to furnish any additional information necessary for the proper administration of this chapter.

3. Audit. The department may require a licensee to submit to an audit of the licensee's business records. If the department requires a licensee to submit to an audit, the licensee shall provide the auditor selected by the department with access to all business records of the licensee and the cost of the audit must be paid by the licensee.

4. Confidentiality. This subsection governs the confidentiality of records under this section.

A. Documents of a licensee inspected or examined by the department pursuant to this section are confidential and may not be disclosed except as needed in a civil or criminal proceeding to enforce any provision of this chapter and the rules adopted pursuant to this chapter or any criminal law.

B. Audit working papers are confidential and may not be disclosed to any person outside the department, except that audit working papers may be disclosed to the licensee subject to the audit. A final audit report is a public record for the purposes of Title 1, chapter 13, subchapter 1. For the purposes of this paragraph, "audit working papers" means all documentation and other information acquired, prepared or maintained by the department and the auditor selected by the department during the conduct of the audit, including, but not limited to, draft reports and portions of draft reports.

§512. Inspection of licensed premises; testing and sampling for product quality control

1. Inspections. A licensee shall submit to an inspection of its licensed premises, including, but not limited to, any places of storage and any locked areas, upon demand and without notice during all business hours and other times of apparent activity by the department, a criminal justice agency or an official authorized by the municipality in which the licensed premises are located.

For the purposes of this subsection, "municipality" has the same meaning as in section 212.

2. Testing and sampling for product quality control. A licensee shall submit to the sampling and testing of adult use marijuana or adult use marijuana products within its possession, upon demand and without notice during all business hours by the department for the purposes of product quality control. The department shall adopt rules governing the sampling and testing of adult use marijuana and adult use marijuana products under this subsection, consistent with the requirements of subchapter 6. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§513. Licensee compliance with regulatory requirements

A licensee, as a condition of licensure under this chapter, shall comply with all applicable provisions of this chapter and all applicable provisions of the rules adopted pursuant to this chapter.

SUBCHAPTER 6
TESTING OF MARIJUANA AND MARIJUANA PRODUCTS

§601. Testing program established

The department shall establish a testing program for adult use marijuana and adult use marijuana products. Except as otherwise provided in this subchapter, the program must require a licensee, prior to selling or distributing adult use marijuana or an adult use marijuana product to a consumer or to another licensee, to submit the marijuana or marijuana product to a testing facility for testing to ensure that the marijuana or marijuana product does not exceed the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required and to ensure correct labeling. The department shall adopt rules establishing a testing program pursuant to this section, rules identifying the types of contaminants that are injurious to health for which marijuana and marijuana products must be tested under this subchapter and rules regarding the maximum level of allowable contamination for each contaminant. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§602. Mandatory testing

A licensee may not sell or distribute adult use marijuana or an adult use marijuana product to a consumer or to another licensee under this chapter unless the marijuana or marijuana product has been tested pursuant to this subchapter and the rules adopted pursuant to this subchapter and that mandatory testing has demonstrated that the marijuana or marijuana product does not exceed the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required.

1. Scope of mandatory testing. Mandatory testing of adult use marijuana and adult use marijuana products under this section must include, but is not limited to, testing for:

- A. Residual solvents, poisons and toxins;
- B. Harmful chemicals;
- C. Dangerous molds and mildew;
- D. Harmful microbes, including, but not limited to, Escherichia coli and salmonella;
- E. Pesticides, fungicides and insecticides; and
- F. THC potency, homogeneity and cannabinoid profiles to ensure correct labeling.

The department may temporarily waive mandatory testing requirements under this section for any contaminant or factor for which the department has determined that there exists no licensed testing facility in

the State capable of and certified to perform such testing.

2. Record keeping. A licensee shall maintain a record of all mandatory testing that includes a description of the adult use marijuana or adult use marijuana product provided to the testing facility, the identity of the testing facility and the results of the mandatory test.

3. Testing process, protocols and standards. The department shall establish by rule processes, protocols and standards for mandatory and other testing of marijuana and marijuana products that conform with the best practices generally used within the marijuana industry.

§603. Notification requirements

1. Notification of testing results required. If the results of a mandatory test conducted pursuant to section 602 indicate that the tested adult use marijuana or adult use marijuana product exceeds the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required, the testing facility immediately shall quarantine, document and properly destroy the marijuana or marijuana product, except when the owner of the tested marijuana or marijuana product has successfully undertaken remediation and retesting, and within 30 days of completing the test shall notify the department of the test results.

2. Notification of testing results not required. A testing facility is not required to notify the department of the results of any test:

- A. Conducted on adult use marijuana or an adult use marijuana product at the direction of a licensee pursuant to section 602 that demonstrates that the marijuana or marijuana product does not exceed the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required;
- B. Conducted on adult use marijuana or an adult use marijuana product at the direction of a licensee for research and development purposes only, so long as the licensee notifies the testing facility prior to the performance of the test that the testing is for research and development purposes only;
- C. Conducted on marijuana or a marijuana product at the direction of a person who is not a licensee; or
- D. Conducted on a substance that is not marijuana or a marijuana product.

§604. Sampling for testing

If a test to be performed by a testing facility is a mandatory test under section 602, an employee or designee of the testing facility must perform the sampling required for the test. If a test to be performed by a

testing facility is not a mandatory test, the owner of the marijuana or marijuana product, or a designee of the owner, may perform the sampling required for the test.

§605. Additional testing not required

Notwithstanding section 602, a licensee may sell or furnish to a consumer or to another licensee adult use marijuana or an adult use marijuana product that the licensee has not submitted for testing in accordance with this subchapter and rules adopted pursuant to this subchapter if:

1. Prior testing. The marijuana or marijuana product has previously undergone testing in accordance with this subchapter and rules adopted pursuant to this subchapter at the direction of another licensee and that testing demonstrated that the marijuana or marijuana product does not exceed the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required;

2. Proper documentation. The mandatory testing process and the test results for the marijuana or marijuana product are documented in accordance with the requirements of this chapter and all applicable rules adopted pursuant to this chapter;

3. Tracking maintained. Tracking from immature marijuana plant to the point of retail sale has been maintained for the marijuana or marijuana product and transfers of the marijuana or marijuana product to another licensee or to a consumer can be easily identified; and

4. No subsequent processing, manufacturing or alteration. Since the performance of the prior testing under subsection 1, the marijuana or marijuana product has not undergone any further processing, manufacturing or alteration, other than the packaging and labeling of the marijuana or marijuana product for sale.

§606. Coordination with testing program and rules for marijuana and marijuana products for medical use

In adopting rules and regulating the testing of adult use marijuana and adult use marijuana products under this subchapter, the department shall ensure that, when necessary and practicable, the regulation of the testing of adult use marijuana and adult use marijuana products under this subchapter is consistent with the regulation of the testing of marijuana and marijuana products for medical use under the Maine Medical Use of Marijuana Act.

SUBCHAPTER 7

LABELING AND PACKAGING; SIGNS, ADVERTISING AND MARKETING; HEALTH AND SAFETY

§701. Labeling and packaging

1. Labeling requirements. Adult use marijuana and adult use marijuana products to be sold or offered for sale by a licensee to a consumer in accordance with this chapter must be labeled with the following information, as applicable based on the marijuana or marijuana product to be sold:

A. The license numbers of the cultivation facility, the products manufacturing facility and the marijuana store where the adult use marijuana or adult use marijuana product was cultivated, manufactured and offered for sale;

B. An identity statement and universal symbol;

C. Health and safety warning labels as required by rules adopted by the department after consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention;

D. The batch number;

E. A net weight statement;

F. Information on the THC potency of the marijuana or marijuana product and the potency of such other cannabinoids or other chemicals in the marijuana or marijuana product, including, but not limited to, cannabidiol;

G. Information on the amount of THC and cannabidiol per serving of the marijuana or marijuana product and, for edible marijuana products, the number of servings per package;

H. Information on gases, solvents and chemicals used in marijuana extraction;

I. Instructions on usage;

J. For adult use marijuana products:

(1) The amount of marijuana concentrate per serving of the product, as measured in grams, and the amount of marijuana concentrate per package of the product, as measured in grams;

(2) A list of ingredients and possible allergens; and

(3) A recommended use date or expiration date;

K. For edible marijuana products, a nutritional fact panel; and

L. Any other information required by rule by the department.

2. Packaging requirements. Adult use marijuana and adult use marijuana products to be sold or offered for sale by a licensee to a consumer in accordance with this chapter must be packaged in the following manner, as applicable based on the marijuana or marijuana product to be sold:

A. Adult use marijuana and adult use marijuana products must be prepackaged in child-resistant and tamper-evident packaging or must be placed in child-resistant and tamper-evident packaging at the final point of sale to a consumer;

B. Adult use marijuana and adult use marijuana products must be prepackaged in opaque packaging or an opaque container or must be placed in opaque packaging or an opaque container at the final point of sale to a consumer;

C. Packaging for multiserving liquid adult use marijuana products must include an integral measurement component and a child-resistant cap; and

D. Packaging must conform to all other applicable requirements and restrictions imposed by rule by the department.

3. Other approved labeling and packaging. Adult use marijuana and adult use marijuana products to be sold or offered for sale by a licensee to a consumer in accordance with this chapter may include on the label or the packaging of the marijuana or marijuana product:

A. A statement of compatibility with dietary practices;

B. Depictions of geometric shapes or marijuana leaves;

C. Use of the terms "organic," "organically cultivated" or "organically grown" in accordance with requirements regarding the use of such terms as adopted by rule by the department; and

D. Any other information that has been preapproved by the department.

4. Labeling and packaging prohibitions. Adult use marijuana and adult use marijuana products to be sold or offered for sale by a licensee to a consumer in accordance with this chapter:

A. May not be labeled or packaged in violation of a federal trademark law or regulation or in a manner that would cause a reasonable consumer confusion as to whether the marijuana or marijuana product was a trademarked product;

B. May not be labeled or packaged in a manner that is specifically designed to appeal particularly to a person under 21 years of age;

C. May not be labeled or packaged in a manner that obscures identifying information on the label or uses a false or deceptive label;

D. May not be sold or offered for sale using a label or packaging that depicts a human, animal or fruit; and

E. May not be labeled or packaged in violation of any other labeling or packaging requirement or restriction imposed by rule by the department.

§702. Signs, advertising and marketing

1. Prohibitions. Signs, advertising and marketing used by or on behalf of a licensee:

A. May not be misleading, deceptive or false;

B. May not involve advertising or marketing that has a high likelihood of reaching persons under 21 years of age or that is specifically designed to appeal particularly to persons under 21 years of age;

C. May not be placed or otherwise used within 1,000 feet of the property line of a preexisting public or private school, except that, if a municipality by ordinance or other regulation, or, in the case of a town, plantation or township located in the unorganized and deorganized areas, the Maine Land Use Planning Commission, chooses to prohibit the placement or use of signs or advertising by or on behalf of a marijuana establishment at distances greater than or less than 1,000 feet but not less than 500 feet from the property line of a preexisting public or private school, that greater or lesser distance applies. As used in this paragraph, "school" has the same meaning as in section 402, subsection 2, paragraph A; and

D. May not violate any other requirement or restriction on signs, advertising and marketing imposed by the department by rule pursuant to subsection 2.

2. Rules on signs, advertising and marketing. The department shall adopt rules regarding the placement and use of signs, advertising and marketing by or on behalf of a licensee, which may include, but are not limited to:

A. A prohibition on health or physical benefit claims in advertising or marketing, including, but not limited to, health or physical benefit claims on the label or packaging of adult use marijuana or an adult use marijuana product;

B. A prohibition on unsolicited advertising or marketing on the Internet, including, but not limited to, banner advertisements on mass-market websites;

C. A prohibition on opt-in advertising or marketing that does not permit an easy and permanent opt-out feature; and

D. A prohibition on advertising or marketing directed toward location-based devices, including, but not limited to, cellular telephones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature.

§703. Other health and safety requirements and restrictions; rules

1. Requirements and restrictions for edible marijuana products. In addition to all other applicable provisions of this subchapter, edible marijuana products to be sold or offered for sale by a licensee to a consumer in accordance with this chapter:

A. May be manufactured in geometric shapes or in the shape of a marijuana leaf;

B. Must be manufactured in a manner that results in the cannabinoid content within the product being homogeneous throughout the product or throughout each element of the product that has a cannabinoid content;

C. Must be manufactured in a manner that results in the amount of marijuana concentrate within the product being homogeneous throughout the product or throughout each element of the product that contains marijuana concentrate;

D. Must have a universal symbol stamped or embossed on each serving of the product;

E. May not be manufactured in the distinct shape of a human, animal or fruit;

F. May not contain more than 10 milligrams of THC per serving of the product and may not contain more than 100 milligrams of THC per package of the product;

G. May not contain additives that are:

- (1) Toxic or harmful to human beings;
- (2) Specifically designed to make the product more addictive or that are misleading to consumers; or
- (3) Specifically designed to make the product appeal particularly to a person under 21 years of age; and

H. May not involve the addition of marijuana to a trademarked food or drink product, except when the trademarked product is used as a component of or ingredient in the edible marijuana product and the edible marijuana product is not advertised or described for sale as containing the trademarked product.

2. Health and safety rules. The department shall adopt labeling, packaging and other necessary health and safety rules for adult use marijuana and

adult use marijuana products to be sold or offered for sale by a licensee to a consumer in accordance with this chapter. Rules adopted pursuant to this subsection must establish mandatory health and safety standards applicable to the cultivation of adult use marijuana, the manufacture of adult use marijuana products and the packaging and labeling of adult use marijuana and adult use marijuana products sold by a licensee to a consumer. Such rules must address, but are not limited to:

A. Requirements for the storage, warehousing and transportation of adult use marijuana and adult use marijuana products by licensees;

B. Sanitary standards for marijuana establishments, including, but not limited to, sanitary standards for the manufacture of adult use marijuana and adult use marijuana products; and

C. Limitations on the display of adult use marijuana and adult use marijuana products at marijuana stores.

§704. Coordination with labeling and packaging rules for marijuana and marijuana products for medical use

In adopting rules and regulating the labeling and packaging of adult use marijuana and adult use marijuana products under this subchapter, the department shall ensure that, when necessary and practicable, the regulation of the labeling and packaging of adult use marijuana and adult use marijuana products under this subchapter is consistent with the regulation of the labeling and packaging of marijuana and marijuana products for medical use under the Maine Medical Use of Marijuana Act.

SUBCHAPTER 8

LICENSE VIOLATIONS; PENALTIES

§801. Department may impose penalty on licensee for license violation; Maine Administrative Procedure Act applies

The department, on its own initiative or on complaint and after investigation, notice and the opportunity for a public hearing, by written order may impose a monetary penalty on a licensee or suspend or revoke the licensee's license for a violation by the licensee or by an agent or employee of the licensee of the provisions of this chapter, the rules adopted pursuant to this chapter or the terms, conditions or provisions of the licensee's license.

1. Additional penalties may be imposed. Any penalties imposed by the department on a licensee pursuant to this subchapter are in addition to any criminal or civil penalties that may be imposed pursuant to other applicable laws or rules.

2. Maine Administrative Procedure Act; appeals. Except as otherwise provided in this subchapter

or in rules adopted pursuant to this subchapter, the imposition of a monetary penalty, suspension or revocation on a licensee by the department, including, but not limited to, the provision of notice and the conduct of hearings, is governed by the Maine Administrative Procedure Act. A final order of the department imposing a monetary penalty on a licensee or suspending or revoking the licensee's license is a final agency action, as defined in Title 5, section 8002, subsection 4, and the licensee may appeal that final order to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

§802. Penalties

1. Monetary penalties. A monetary penalty imposed by the department on a licensee pursuant to this subchapter may not exceed \$100,000 per license violation.

A. The department shall adopt rules setting forth potential amounts of monetary penalties to be imposed on a licensee based upon specific categories of unauthorized conduct by the licensee, including major and minor license violations, as follows:

- (1) Not more than \$10,000 per minor license violation;
- (2) Except as provided in subparagraph (3), not more than \$50,000 per major license violation; and
- (3) Not more than \$100,000 per major license violation affecting public safety.

B. All monetary penalties imposed pursuant to this subchapter must be paid by the licensee to the department in the form of cash or in the form of a certified check or a cashier's check payable to the department. All monetary penalties paid to the department pursuant to this subchapter must be deposited into the Adult Use Marijuana Regulatory Coordination Fund established in section 1102.

2. License suspension. A licensee whose license has been suspended pursuant to this subchapter may not, for the duration of the period of suspension, engage in any activities relating to the operation of the marijuana establishment the licensee is licensed to operate.

3. License revocation. A licensee whose license has been revoked pursuant to this subchapter shall cease immediately all activities relating to the operation of the marijuana establishment the licensee was previously licensed to operate and shall ensure that all adult use marijuana and adult use marijuana products in the possession of the licensee are forfeited to the department for destruction in accordance with section 803.

4. Imposition of monetary penalty upon suspension or revocation. In addition to suspending or revoking a licensee's license, the department may impose a monetary penalty on the licensee consistent with this section.

§803. Disposition of unauthorized marijuana or marijuana products of licensee

1. Order; destruction of marijuana or marijuana products. If the department issues a final order imposing a monetary penalty on or a license suspension or revocation against a licensee pursuant to this subchapter, the department may specify in the order, in addition to any other penalties imposed in the order, that all or a portion of the marijuana or marijuana products in the possession of the licensee are not authorized under this chapter and are subject to destruction. A licensee subject to a final order directing the destruction of marijuana or marijuana products in the possession of the licensee shall forfeit the marijuana and marijuana products described in the order to the department for destruction.

2. Investigation. If the department is notified by a criminal justice agency that there is a pending investigation of a licensee subject to an order imposed under subsection 1, the department may not destroy any marijuana or marijuana products of that licensee until the destruction is approved by the criminal justice agency.

§804. Rules

The department shall adopt rules governing the imposition of monetary penalties, suspensions and revocations under this subchapter, which must include, but are not limited to, provisions relating to notice and conduct of hearings consistent with the Maine Administrative Procedure Act and provisions relating to the disposition of unauthorized marijuana and marijuana products of a licensee.

SUBCHAPTER 9

MARIJUANA ADVISORY COMMISSION

§901. Establishment

The Marijuana Advisory Commission, established by Title 5, section 12004-I, subsection 52-C and referred to in this subchapter as "the commission," is created for the purpose of conducting a continuing study of the laws relating to marijuana and reporting to the Legislature its findings and recommendations on an annual basis.

§902. Membership; chairs; terms; vacancies; quorum

1. Membership. The commission consists of the following 15 members:

- A. Two members of the Senate, including members from each of the 2 parties holding the largest

number of seats in the Legislature, appointed by the President of the Senate;

B. Two members of the House of Representatives, including members from each of the 2 parties holding the largest number of seats in the Legislature, appointed by the Speaker of the House of Representatives;

C. The Commissioner of Administrative and Financial Services or the commissioner's designee;

D. The Commissioner of Agriculture, Conservation and Forestry or the commissioner's designee;

E. The Commissioner of Health and Human Services or the commissioner's designee;

F. The Commissioner of Labor or the commissioner's designee;

G. The Commissioner of Public Safety or the commissioner's designee;

H. The following 3 members, appointed by the President of the Senate:

(1) A representative of a statewide association representing prosecutors;

(2) A representative of a statewide association representing the medical marijuana industry; and

(3) A member of the public; and

I. The following 3 members, appointed by the Speaker of the House of Representatives:

(1) A representative of a statewide association representing the adult use marijuana industry;

(2) A member of the public with demonstrated expertise and credentials in public health policy; and

(3) A member of the public.

2. Chairs. The first-named Senate member is the Senate chair and the first-named House member is the House chair of the commission.

3. Terms. Members of the commission who are Legislators serve during the term of office for which they were elected. Other members of the commission serve for a term of 2 years and may be reappointed.

4. Vacancies. In the event of a vacancy on the commission, the member's unexpired term must be filled through an appointment by the appointing authority for the vacant seat.

5. Quorum. A quorum of the commission consists of 8 members.

§903. Duties

1. Review of laws and rules. The commission shall review laws and rules pertaining to the adult use marijuana and medical marijuana industries in this State and any other provision of law or rule pertaining to marijuana, including, but not limited to, laws and rules regarding public health, public safety, juvenile and adult criminal and civil offenses, workplace drug testing, workplace safety, motor vehicle safety, landlords and tenants, the personal use of marijuana and taxes and fees paid to the State by applicants and registered primary caregivers and registered dispensaries under the Maine Medical Use of Marijuana Act and applicants and licensees under this Act.

2. Solicitation of public comment regarding law enforcement contacts with citizens. The commission shall, on an annual basis, solicit public comment regarding contacts between law enforcement officers and citizens following the initiation of an adult use marijuana market in the State that involve the personal adult use of marijuana and marijuana products and the home cultivation of marijuana for personal adult use. The public comments solicited under this subsection and any findings or recommendations by the commission relating to those solicited comments must be included in the annual report under subsection 5.

3. Submission of recommendations to Legislature. The commission shall submit to the Legislature such recommended changes to the laws as it considers appropriate to:

A. Preserve the public health and safety and the well-being of the citizens of the State;

B. Preserve the intent of the citizens of the State as expressed in passage of the Marijuana Legalization Act, former Title 7, chapter 417; and

C. Standardize, coordinate or integrate the adult use marijuana and medical marijuana laws, rules and programs in the State, including, but not limited to, recommended changes regarding the standardization, coordination or integration of the laws and rules relating to the testing, labeling and packaging of adult use marijuana and adult use marijuana products and marijuana and marijuana products for medical use.

The commission shall include any recommended changes in its annual report to the Legislature pursuant to subsection 5.

4. Public hearings. The commission may hold public hearings at such times and at such places as the commission considers appropriate in order to take testimony concerning the use, possession and distribution of marijuana, law enforcement contacts with citizens as described in subsection 2, the alignment of this Act

with other provisions of law and any other matter relating to the duties of the commission.

5. Report to Legislature. Beginning January 15, 2020, and annually thereafter, the commission shall submit a report containing its findings and recommendations, together with any suggested legislation, to the joint standing committees of the Legislature having jurisdiction over health and human services matters and adult use marijuana matters.

§904. Organization; staffing; consultation

1. Organization; staffing. The Legislative Council shall provide staffing services to the commission, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session. The Executive Director of the Legislative Council shall notify all members of the commission of the time and place of the first meeting.

2. Consultation. Whenever the commission considers it appropriate, it may seek the advice of consultants or experts, including representatives of the legislative and executive branches of State Government, in fields related to its duties.

§905. Reimbursement of expenses

Members of the commission must be compensated in accordance with Title 5, chapter 379.

SUBCHAPTER 10

EXCISE TAX ON ADULT USE MARIJUANA

§1001. Excise tax imposed

Beginning on the first day of the calendar month in which adult use marijuana may be sold in the State by a cultivation facility under this chapter, an excise tax on adult use marijuana is imposed in accordance with this subchapter.

1. Excise tax on marijuana flower and mature marijuana plants. A cultivation facility licensee shall pay an excise tax of \$335 per pound of marijuana flower or mature marijuana plants sold to other licensees in the State.

2. Excise tax on marijuana trim. A cultivation facility licensee shall pay an excise tax of \$94 per pound of marijuana trim sold to other licensees in the State.

3. Excise tax on immature marijuana plants and seedlings. A cultivation facility licensee shall pay an excise tax of \$1.50 per immature marijuana plant or seedling sold to other licensees in the State.

4. Excise tax on marijuana seeds. A cultivation facility licensee shall pay an excise tax of \$0.30 per marijuana seed sold to other licensees in the State.

§1002. Payment of excise tax

On or before the last day of each month, a cultivation facility licensee shall pay to the department all excise taxes due under this subchapter on the adult use marijuana sold by the cultivation facility licensee to other licensees during the preceding calendar month.

§1003. Application of excise tax revenue

All excise tax revenue collected by the department pursuant to this subchapter on the sale of adult use marijuana must be deposited into the General Fund, except that, on or before the last day of each month, the department shall transfer 12% of the excise tax revenue received by the department during the preceding month pursuant to this subchapter to the Adult Use Marijuana Public Health and Safety Fund established under section 1101.

SUBCHAPTER 11

ADULT USE MARIJUANA PUBLIC HEALTH AND SAFETY FUND; ADULT USE MARIJUANA REGULATORY COORDINATION FUND

§1101. Adult Use Marijuana Public Health and Safety Fund

The Adult Use Marijuana Public Health and Safety Fund, referred to in this section as "the fund," is established as a dedicated, nonlapsing fund within the department for the purposes specified in this section.

1. Sources of fund. The State Controller shall credit to the fund:

A. Money received from the excise tax imposed on the sale of adult use marijuana by a cultivation facility licensee to other licensees pursuant to subchapter 10 in the amount required under section 1003;

B. Money received from the sales tax imposed on the sale of adult use marijuana and adult use marijuana products by a marijuana store licensee to a consumer pursuant to Title 36, section 1811 in the amount required under Title 36, section 1818;

C. All money from any other source, whether public or private, designated for deposit into or credited to the fund; and

D. Interest earned or other investment income on balances in the fund.

2. Uses of fund. Money credited to the fund pursuant to subsection 1 may be used by the department as provided in this subsection.

A. No more than 50% of all money credited to the fund may be expended by the department to fund public health and safety awareness and education programs, initiatives, campaigns and activities relating to the sale and use of adult use mari-

juana and adult use marijuana products conducted in accordance with section 108 by the department, another state agency or department or any other public or private entity.

B. No more than 50% of all money credited to the fund may be expended by the department to fund enhanced law enforcement training programs relating to the sale and use of adult use marijuana and adult use marijuana products for local, county and state law enforcement officers conducted in accordance with section 109 by the department, the Maine Criminal Justice Academy, another state agency or department or any other public or private entity.

3. Application of fund to departmental expenses prohibited. Money in the fund may not be applied to any expenses incurred by the department in implementing, administering or enforcing this chapter.

§1102. Adult Use Marijuana Regulatory Coordination Fund

The Adult Use Marijuana Regulatory Coordination Fund, referred to in this section as "the fund," is established as a dedicated, nonlapsing Other Special Revenue Funds account in the department. The fund is administered and used by the commissioner for the purposes of adopting rules under this chapter and for the purposes of implementing, administering and enforcing this chapter. The commissioner may expend money in the fund to enter into contracts with consultants and employ staff, as determined necessary by the commissioner, conduct meetings with stakeholders and conduct any other activities related to the implementation, administration and enforcement of this chapter.

CHAPTER 3

PERSONAL ADULT USE OF MARIJUANA AND MARIJUANA PRODUCTS; HOME CULTIVATION OF MARIJUANA FOR PERSONAL ADULT USE

§1501. Personal adult use of marijuana and marijuana products

1. Authorized conduct. Except as otherwise authorized by this Title, a person 21 years of age or older may:

A. Use, possess or transport marijuana paraphernalia;

B. Use, possess or transport at any one time up to 2 1/2 ounces of marijuana or 2 1/2 ounces of a combination of marijuana and marijuana concentrate that includes no more than 5 grams of marijuana concentrate;

C. Transfer or furnish, without remuneration, to a person 21 years of age or older up to 2 1/2 ounces of marijuana or 2 1/2 ounces of a combination of

marijuana and marijuana concentrate that includes no more than 5 grams of marijuana concentrate;

D. Transfer or furnish, without remuneration, to a person 21 years of age or older up to 6 immature marijuana plants or seedlings;

E. Subject to the requirements and restrictions of section 1502, possess, cultivate or transport at any one time up to 3 mature marijuana plants, 12 immature marijuana plants and an unlimited number of seedlings and possess all the marijuana produced by such plants at the person's place of residence or at the location where the marijuana was cultivated;

F. Subject to the limitations imposed under paragraph B, purchase up to 2 1/2 ounces of adult use marijuana or 2 1/2 ounces of a combination of adult use marijuana and marijuana concentrate that includes no more than 5 grams of marijuana concentrate from a marijuana store; and

G. Subject to the limitations imposed under paragraph E, purchase up to 12 immature marijuana plants or seedlings from a nursery cultivation facility as described in section 301, subsection 5 or from a marijuana store.

For the purposes of this subsection, "remuneration" includes a donation or any other monetary payment received directly or indirectly by a person in exchange for goods or services as part of a transaction in which marijuana, marijuana products or marijuana plants are transferred or furnished by that person to another person.

2. Consumption of marijuana and marijuana products; violation. The provisions of this subsection apply to the consumption of marijuana or marijuana products by a person 21 years of age or older.

A. A person 21 years of age or older may consume marijuana or marijuana products only if that person is:

(1) In a private residence, including curtilage; or

(2) On private property, not generally accessible by the public, and the person is explicitly permitted to consume marijuana or marijuana products on the property by the owner of the property.

B. A person 21 years of age or older may not consume marijuana or marijuana products:

(1) If that person is the operator of a vehicle on a public way or a passenger in the vehicle. As used in this subparagraph, "vehicle" has the same meaning as in Title 29-A, section 101, subsection 91;

(2) In a private residence or on private property used as a day care or baby-sitting service during the hours in which the residence or property is being operated as a day care or baby-sitting service;

(3) By means of smoking the marijuana or marijuana product in a designated smoking area as provided under the Workplace Smoking Act of 1985; or

(4) By means of smoking the marijuana or marijuana product in a public place or in a public area where smoking is prohibited under Title 22, chapter 262.

C. A person who violates this subsection commits a civil violation for which a fine of not more than \$100 may be adjudged in addition to any criminal or civil penalties that may be imposed pursuant to other applicable laws or rules.

§1502. Home cultivation of marijuana for personal adult use

The provisions of this section apply to the home cultivation of marijuana for personal adult use by a person 21 years of age or older, but do not apply to the cultivation of marijuana for medical use by a qualifying patient, a primary caregiver, a registered primary caregiver or a registered dispensary as authorized by the Maine Medical Use of Marijuana Act.

1. Cultivation of up to 3 mature marijuana plants per person for personal adult use authorized. Subject to the applicable requirements and restrictions of subsections 2, 3 and 4, a person 21 years of age or older may cultivate up to 3 mature marijuana plants, up to 12 immature marijuana plants and an unlimited number of seedlings for personal adult use:

A. On a parcel or tract of land on which the person is domiciled;

B. On a parcel or tract of land owned by the person on which the person is not domiciled; or

C. On a parcel or tract of land not owned by the person and on which the person is not domiciled so long as the owner of the parcel or tract of land by written agreement permits the cultivation and care of the marijuana plants on the parcel or tract of land by that person.

A person may cultivate the marijuana plants and seedlings authorized under this subsection at multiple locations so long as such cultivation activities otherwise meet all requirements and restrictions of this section.

2. Cultivation requirements. A person who cultivates marijuana for personal adult use pursuant to this section shall:

A. Ensure that the marijuana is not visible from a public way without the use of aircraft or binoculars or other optical aids;

B. Take reasonable precautions to prevent unauthorized access by a person under 21 years of age;

C. Attach to each mature marijuana plant and each immature marijuana plant a legible tag that includes the person's name, driver's license number or identification number, a notation that the marijuana plant is being grown for personal adult use as authorized under this section and, if the cultivation is on a parcel or tract of land owned by another person, the name of that owner; and

D. Comply with all applicable local regulations relating to the home cultivation of marijuana for personal adult use that have been adopted in accordance with subsection 3 or 4.

3. Local regulation of home cultivation of marijuana for personal adult use within municipalities. In accordance with this subchapter and pursuant to the home rule authority granted under the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, a municipality may regulate the home cultivation of marijuana for personal adult use within the municipality.

A. A municipality may adopt an ordinance or other regulation limiting the total number of mature marijuana plants that may be cultivated on any one parcel or tract of land within the municipality so long as that ordinance or regulation allows for the cultivation of 3 mature marijuana plants, 12 immature marijuana plants and an unlimited number of seedlings by each person 21 years of age or older who is domiciled on a parcel or tract of land.

B. A municipality may not generally prohibit the home cultivation of marijuana for personal adult use within the municipality, restrict the areas within the municipality in which home cultivation of marijuana for personal adult use is allowed or charge a license or other fee to a person relating to the home cultivation of marijuana for personal adult use within the municipality.

4. Local regulation of home cultivation of marijuana for personal adult use within town, plantation or township in unorganized and deorganized areas. In accordance with this subchapter and pursuant to the authority granted under Title 12, chapter 206-A, the Maine Land Use Planning Commission may regulate the home cultivation of marijuana for personal adult use within a town, plantation or township in the unorganized and deorganized areas.

A. The Maine Land Use Planning Commission may limit the total number of mature marijuana plants that may be cultivated on any one parcel or

tract of land within a town, plantation or township in the unorganized and deorganized areas so long as that limitation allows for the cultivation of 3 mature marijuana plants, 12 immature marijuana plants and an unlimited number of seedlings by each person 21 years of age or older who is domiciled on a parcel or tract of land.

B. The Maine Land Use Planning Commission may not generally prohibit the home cultivation of marijuana for personal adult use within a town, plantation or township in the unorganized and deorganized areas; restrict the areas within the town, plantation or township in which home cultivation of marijuana for personal adult use is allowed; or charge a license or other fee to a person relating to the home cultivation of marijuana for personal adult use within the town, plantation or township.

§1503. Home extraction of marijuana concentrate by use of inherently hazardous substance prohibited

Except as authorized under section 502, subsection 7 or pursuant to the Maine Medical Use of Marijuana Act, a person may not manufacture marijuana concentrate using an inherently hazardous substance. The owner of a property or a parcel or tract of land may not intentionally or knowingly allow another person to manufacture marijuana concentrate using an inherently hazardous substance within or on that property or land.

§1504. Violations; penalties

Except as provided in section 1501, subsection 2, a person who violates any provision of this chapter is subject to forfeiture or seizure of any unauthorized marijuana, marijuana products or marijuana plants pursuant to Title 15, chapter 517 and is subject to any additional criminal or civil penalties that may be imposed pursuant to other applicable laws or rules.

Sec. A-7. Possession, cultivation and transportation of up to 6 mature marijuana plants authorized for 6-month period following effective date of Act. Notwithstanding any provision of the Maine Revised Statutes, Title 28-B, chapter 3 to the contrary, and subject to the same cultivation restrictions and requirements of Title 28-B, section 1502, subsections 1 and 2 that are applicable to the possession, cultivation and transportation of up to 3 mature marijuana plants by a person 21 years of age or older as authorized under the Marijuana Legalization Act, for the period beginning on the effective date of this Act and ending 6 months after that date, a person 21 years of age or older may possess, cultivate and transport up to 6 mature marijuana plants.

Sec. A-8. Transfer of funds; Adult Use Marijuana Regulatory Coordination Fund. Notwithstanding any other provision of law to the con-

trary, the State Controller, no later than 5 days after the effective date of this Act, shall transfer the balance of the Retail Marijuana Regulatory Coordination Fund in the Department of Administrative and Financial Services to the Adult Use Marijuana Regulatory Coordination Fund in the Department of Administrative and Financial Services.

Sec. A-9. Department of Administrative and Financial Services; acceptance and processing of applications. No later than 30 days after the final adoption of rules by the Department of Administrative and Financial Services pursuant to the authority granted in the Marijuana Legalization Act established pursuant to the Maine Revised Statutes, Title 28-B, chapter 1, the department shall begin accepting and processing applications for licenses to operate marijuana establishments under the Marijuana Legalization Act.

Sec. A-10. Department of Administrative and Financial Services; time frame for action on applications. Notwithstanding the Maine Revised Statutes, Title 28-B, section 205, subsection 3, the Department of Administrative and Financial Services may take longer than 90 days to act on any application for a license to operate a marijuana establishment under the Marijuana Legalization Act established pursuant to Title 28-B, chapter 1 that is received by the department during the period between the date that the department first begins accepting and processing applications under the Marijuana Legalization Act and 6 months from that date.

PART B

Sec. B-1. 15 MRSA §5821, first ¶, as amended by IB 1999, c. 1, §2, is further amended to read:

Except as provided in section 5821-A or 5821-B, the following are subject to forfeiture to the State and no property right may exist in them:

Sec. B-2. 15 MRSA §5821-B is enacted to read:

§5821-B. Property not subject to forfeiture based on adult use of marijuana

Property is not subject to forfeiture under this chapter if the activity that subjects the person's property to forfeiture is the adult use of marijuana pursuant to a license issued under Title 28-B, chapter 1 or relating to the personal adult use of marijuana pursuant to Title 28-B, chapter 3 and the person meets all applicable requirements for the adult use of marijuana pursuant to Title 28-B.

Sec. B-3. 17-A MRSA §1103, sub-§1-B, as enacted by PL 2001, c. 383, §115 and affected by §156, is amended to read:

1-B. A person is not guilty of unlawful trafficking in a scheduled drug if the conduct that constitutes the trafficking is either:

A. Expressly authorized by Title 22, Title 28-B or Title 32; or

B. Expressly made a civil violation by Title 22 or Title 28-B.

Sec. B-4. 17-A MRSA §1106, sub-§1-B, as enacted by PL 2001, c. 383, §121 and affected by §156, is amended to read:

1-B. A person is not guilty of unlawful furnishing of a scheduled drug if the conduct that constitutes the furnishing is expressly:

A. Authorized by Title 22, Title 28-B or Title 32; or

B. Made a civil violation by Title 22 or Title 28-B.

Sec. B-5. 17-A MRSA §1107-A, sub-§2, as enacted by PL 2001, c. 383, §127 and affected by §156, is amended to read:

2. A person is not guilty of unlawful possession of a scheduled drug if the conduct that constitutes the possession is expressly:

A. Authorized by Title 22, Title 28-B or Title 32; or

B. Made a civil violation by Title 22 or Title 28-B.

Sec. B-6. 17-A MRSA §1111-A, sub-§1, as corrected by RR 2015, c. 1, §11, is amended to read:

1. As used in this section the term "drug paraphernalia" means all equipment, products and materials of any kind that are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a scheduled drug in violation of this chapter or Title 22, section 2383, except that this section does not apply to a person who is authorized to possess marijuana for medical use pursuant to Title 22, chapter 558-C, to the extent the drug paraphernalia is used for that person's medical use of marijuana; to a person who is authorized to possess marijuana pursuant to Title 28-B, to the extent the drug paraphernalia is used for that person's adult use of marijuana; or to a marijuana store licensed pursuant to Title 28-B, to the extent that the drug paraphernalia relates to the sale or offering for sale of marijuana by the marijuana store. It includes, but is not limited to:

A. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of

any species of plant which is a scheduled drug or from which a scheduled drug can be derived;

B. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing scheduled drugs;

C. Isomerization devices used or intended for use in increasing the potency of any species of plant that is a scheduled drug;

D. Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of scheduled drugs;

E. Scales and balances used or intended for use in weighing or measuring scheduled drugs;

F. Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting scheduled drugs;

G. Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

H. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding scheduled drugs;

I. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of scheduled drugs;

J. Containers and other objects used or intended for use in storing or concealing scheduled drugs; and

K. Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(2) Water pipes;

(3) Carburetion tubes and devices;

(4) Smoking and carburetion masks;

(5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

(6) Miniature cocaine spoons and cocaine vials;

(7) Chamber pipes;

(8) Carburetor pipes;

(9) Electric pipes;

- (10) Air-driven pipes;
- (11) Chillums;
- (12) Bongs; or
- (13) Ice pipes or chillers.

Sec. B-7. 17-A MRSA §1111-A, sub-§§4-A and 4-B, as enacted by PL 2011, c. 464, §20, are amended to read:

4-A. Except as provided in Title 22, chapter 558-C or in Title 28-B, a person is guilty of use of drug paraphernalia if:

A. The person trafficks in or furnishes drug paraphernalia knowing, or under circumstances when that person reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383, and the person to whom that person is trafficking or furnishing drug paraphernalia is:

- (1) At least 16 years of age. Violation of this subparagraph is a Class E crime; or
- (2) Less than 16 years of age. Violation of this subparagraph is a Class D crime; or

B. The person places in a newspaper, magazine, handbill or other publication an advertisement knowing, or under circumstances when that person reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects intended for use as drug paraphernalia. Violation of this paragraph is a Class E crime.

4-B. Except as provided in Title 22, chapter 558-C or in Title 28-B, a person commits a civil violation if:

A. The person in fact uses drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of \$300 must be adjudged, none of which may be suspended; or

B. The person possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22,

section 2383. Violation of this paragraph is a civil violation for which a fine of \$300 must be adjudged, none of which may be suspended.

Sec. B-8. 17-A MRSA §1114, as enacted by PL 1975, c. 499, §1, is amended to read:

§1114. Schedule Z drugs; contraband subject to seizure

All scheduled Z drugs, the unauthorized possession of which constitutes a civil violation under Title 22 or Title 28-B, are ~~hereby declared~~ contraband, and may be seized and confiscated by the State.

Sec. B-9. 17-A MRSA §1115, as enacted by PL 1975, c. 499, §1 and amended by c. 740, §106-A, is further amended to read:

§1115. Notice of conviction

On the conviction of any person of ~~the~~ a violation of any provision of this chapter, or on ~~his~~ a person's being found liable for a civil violation under Title 22 or Title 28-B, a copy of the judgment or sentence and of the opinion of the court or judge, if any opinion ~~be~~ is filed, ~~shall~~ must be sent by the clerk of court or by the judge to the board or officer, if any, by whom the person has been licensed or registered to practice ~~his~~ that person's profession or to carry on ~~his~~ that person's business if the court finds that such conviction or liability renders ~~such~~ that person unfit to engage in ~~such~~ that person's profession or business. The court ~~may~~, in its discretion, may suspend or revoke the license or registration of the person to practice ~~his~~ that person's profession or to carry on ~~his~~ that person's business if the court finds that such conviction or liability renders ~~such~~ that person unfit to engage in ~~such~~ that person's profession or business. On the application of any person whose license or registration has been suspended or revoked and upon proper showing and for good cause, ~~said~~ a board or officer may reinstate ~~such~~ that person's license or registration.

Sec. B-10. 17-A MRSA §1117, sub-§4, as enacted by PL 2009, c. 631, §3 and affected by §51, is amended to read:

4. A person is not guilty of cultivating marijuana if the conduct is expressly authorized by Title 22, chapter 558-C or Title 28-B.

Sec. B-11. 25 MRSA §1542-A, sub-§1, ¶O is enacted to read:

O. Who is required to submit to a criminal history record check pursuant to Title 28-B, section 204.

Sec. B-12. 25 MRSA §1542-A, sub-§3, ¶N is enacted to read:

N. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph O at the request of that per-

son and upon payment of the expenses by that person as provided under Title 28-B, section 204.

Sec. B-13. 25 MRSA §1542-A, sub-§4, as amended by PL 2017, c. 253, §4 and c. 258, Pt. B, §4, is repealed and the following enacted in its place:

4. Duty to submit to State Bureau of Identification. It is the duty of the law enforcement agency taking the fingerprints as required by subsection 3, paragraphs A, B and G to transmit immediately to the State Bureau of Identification the criminal fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F or pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless an express request is made by the commanding officer of the State Bureau of Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Education. The bureau may not use the fingerprints for any purpose other than that provided for under Title 20-A, section 6103. The bureau shall retain the fingerprints, except as provided under Title 20-A, section 6103, subsection 9. Fingerprints taken pursuant to subsection 1, paragraph I and subsection 3, paragraph I must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the court and the Department of Public Safety, Gambling Control Board, respectively. Fingerprints taken pursuant to subsection 1, paragraph J, K or L must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Administrative and Financial Services, Bureau of Revenue Services. Fingerprints taken pursuant to subsection 1, paragraph M must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Board of Osteopathic Licensure, established in Title 32, chapter 36. Fingerprints taken pursuant to subsection 1, paragraph N must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Board of Licensure in Medicine, established in Title 32, chapter 48. Fingerprints taken pursuant to subsection 1, paragraph M must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the State Board of Nursing. Fingerprints taken pursuant to subsection 1, paragraph O must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks under Title 28-B, section 204.

PART C

Sec. C-1. 30-A MRSA §4452, sub-§5, ¶U, as corrected by RR 2007, c. 2, §17, is amended to read:

U. Standards under a wind energy development certification issued by the Department of Environmental Protection pursuant to Title 35-A, section 3456 if the municipality chooses to enforce those standards; ~~and~~

Sec. C-2. 30-A MRSA §4452, sub-§5, ¶V, as reallocated by RR 2007, c. 2, §18, is amended to read:

V. The Maine Uniform Building and Energy Code, adopted pursuant to Title 10, chapter 1103; ~~and~~

Sec. C-3. 30-A MRSA §4452, sub-§5, ¶W is enacted to read:

W. Local land use and business licensing ordinances adopted pursuant to Title 28-B, chapter 1, subchapter 4.

Sec. C-4. 30-A MRSA §7063 is enacted to read:

§7063. Adult use marijuana

A plantation has the same powers and duties, and is subject to the same restrictions and requirements, as a municipality under section 4452, subsection 5, paragraph W and under Title 28-B, chapters 1 and 3.

PART D

Sec. D-1. 36 MRSA §1752, sub-§§1-I, 1-J and 6-D are enacted to read:

1-I. Adult use marijuana. "Adult use marijuana" has the same meaning as in Title 28-B, section 102, subsection 1.

1-J. Adult use marijuana product. "Adult use marijuana product" has the same meaning as in Title 28-B, section 102, subsection 2.

6-D. Marijuana establishment. "Marijuana establishment" has the same meaning as in Title 28-B, section 102, subsection 29.

Sec. D-2. 36 MRSA §1811, first ¶, as amended by PL 2015, c. 267, Pt. OOOO, §5 and affected by §7, is further amended to read:

A tax is imposed on the value of all tangible personal property, products transferred electronically and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an

automobile, of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles or of a loaner vehicle that is provided other than to a motor vehicle dealer's service customers pursuant to a manufacturer's or dealer's warranty; 7% on the value of prepared food; and 5% on the value of all other tangible personal property and taxable services and products transferred electronically. Notwithstanding the other provisions of this section, from October 1, 2013 to December 31, 2015, the rate of tax is 8% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 8% on the value of prepared food; 8% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; and 5.5% on the value of all other tangible personal property and taxable services and products transferred electronically. Notwithstanding the other provisions of this section, beginning January 1, 2016, the rate of tax is 9% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 8% on the value of prepared food; 8% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; and 5.5% on the value of all other tangible personal property and taxable services and products transferred electronically. Notwithstanding the other provisions of this section, beginning on the first day of the calendar month in which adult use marijuana and adult use marijuana products may be sold in the State by a marijuana establishment licensed to conduct retail sales pursuant to Title 28-B, chapter 1, the rate of tax is 10% on the value of adult use marijuana and adult use marijuana products. Value is measured by the sale price, except as otherwise provided. The value of rental for a period of less than one year of an automobile or of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles is the total rental charged to the lessee and includes, but is not limited to, maintenance and service contracts, drop-off or pick-up fees, airport surcharges, mileage fees and any separately itemized charges on the rental agreement to recover the owner's estimated costs of the charges imposed by government authority for title fees, inspection fees, local excise tax and agent fees on all vehicles in its rental fleet registered in the State. All fees must be disclosed when an estimated quote is provided to the lessee.

Sec. D-3. 36 MRSA §1817, as amended by PL 2017, c. 1, §21, is repealed.

Sec. D-4. 36 MRSA §1818 is enacted to read:

§1818. Tax on adult use marijuana and adult use marijuana products

All sales tax revenue collected pursuant to section 1811 on the sale of adult use marijuana and adult use marijuana products must be deposited into the General Fund, except that, on or before the last day of each month, the State Controller shall transfer 12% of the sales tax revenue received by the assessor during the preceding month pursuant to section 1811 to the Adult Use Marijuana Public Health and Safety Fund established under Title 28-B, section 1101.

PART E

Sec. E-1. 3 MRSA §959, sub-§1, ¶¶F and M, as amended by PL 2013, c. 505, §1, are further amended to read:

F. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall use the following list as a guideline for scheduling reviews:

- (6) Department of Health and Human Services in 2017;
- (7) Board of the Maine Children's Trust Incorporated in 2019; ~~and~~
- (9) Maine Developmental Disabilities Council in 2019-; ~~and~~
- (10) The bureau or division within the Department of Administrative and Financial Services that administers and enforces the Maine Medical Use of Marijuana Act in 2025.

M. The joint standing committee of the Legislature having jurisdiction over state and local government matters shall use the following list as a guideline for scheduling reviews:

- (1) Capitol Planning Commission in 2019;
- (1-A) Maine Governmental Facilities Authority in 2021;
- (2) State Civil Service Appeals Board in 2021;
- (3) State Claims Commission in 2021;
- (4) Maine Municipal Bond Bank in 2015;
- (5) Office of Treasurer of State in 2015;
- (6) Department of Administrative and Financial Services, except for the Bureau of Revenue Services and the bureau or division within the department that administers and enforces the Maine Medical Use of Marijuana Act, in 2019; and
- (7) Department of the Secretary of State, except for the Bureau of Motor Vehicles, in 2019.

Sec. E-2. 22 MRSA §2422, sub-§§1-C and 2-A are enacted to read:

1-C. Commissioner. "Commissioner" means the Commissioner of Administrative and Financial Services.

2-A. Department. "Department" means the Department of Administrative and Financial Services.

Sec. E-3. 22 MRSA §2422-A is enacted to read:

§2422-A. Administration and enforcement; rulemaking

1. Administration and enforcement. The department shall administer and enforce this chapter and the rules adopted pursuant to this chapter, except that the administration and enforcement by the department of this chapter and the rules adopted pursuant to this chapter may not be assigned to any bureau or division within the department responsible for the administration and enforcement of the laws governing the manufacture, sale and distribution of liquor.

2. Rulemaking. The department, after consultation with the Department of Health and Human Services, may adopt rules as necessary to administer and enforce this chapter or amend rules previously adopted pursuant to this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. E-4. 22 MRSA §2423-B, sub-§2, as amended by PL 2013, c. 516, §8, is further amended to read:

2. Minor qualifying patient. Prior to providing written certification for the medical use of marijuana by a minor qualifying patient under this section, a medical provider, referred to in this subsection as "the treating medical provider," shall inform the minor qualifying patient and the parent or legal guardian of the patient of the risks and benefits of the medical use of marijuana and that the patient may benefit from the medical use of marijuana. Except with regard to a minor qualifying patient who is eligible for hospice care, prior to providing a written certification under this section, the treating medical provider shall consult with a qualified physician, referred to in this paragraph as "the consulting physician," from a list of physicians who may be willing to act as consulting physicians maintained by the department that is compiled by the department after consultation with the Department of Health and Human Services and statewide associations representing licensed medical professionals. The consultation between the treating medical provider and the consulting physician may consist of examination of the patient or review of the patient's medical file. The consulting physician shall provide an advisory opinion to the treating medical provider and the parent or legal guardian of the minor qualifying patient concerning

whether the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition. If the department or the consulting physician does not respond to a request by the treating medical provider within 10 days of receipt of the request, the treating medical provider may provide written certification for treatment without consultation with a physician.

Sec. E-5. 22 MRSA §2424, sub-§1, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. E-6. 22 MRSA §2424, sub-§2, as repealed and replaced by PL 2011, c. 407, Pt. B, §21, is amended to read:

2. Adding debilitating medical conditions. The department in accordance with section 2422, subsection 2, paragraph D shall adopt rules regarding the consideration of petitions from the public to add medical conditions or treatments to the list of debilitating medical conditions set forth in section 2422, subsection 2. In considering those petitions, the department shall consult with the Department of Health and Human Services, Maine Center for Disease Control and Prevention and provide an opportunity for public hearing of, and an opportunity to comment on those petitions. After the hearing, the commissioner shall approve or deny a petition within 180 days of its submission. The approval or denial of such a petition constitutes final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

Sec. E-7. 22 MRSA §2425, sub-§8, ¶L, as corrected by RR 2013, c. 2, §33, is amended to read:

L. Notwithstanding any provision of this subsection to the contrary, the department shall comply with Title 36, section 175. Information provided by the department pursuant to this paragraph may be used by the ~~Department of Administrative and Financial Services~~, Bureau of Revenue Services only for the administration and enforcement of taxes imposed under Title 36.

Sec. E-8. 22 MRSA §2425, sub-§10, as amended by PL 2013, c. 516, §14, is further amended to read:

10. Annual report. The department shall submit to the joint standing committee of the Legislature having jurisdiction over health and human services matters an annual report by April 1st each year that does not disclose any identifying information about cardholders or physicians, but does contain, at a minimum:

- A. The number of applications and renewals filed for registry identification cards;
- B. The number of qualifying patients and primary caregivers approved in each county;

D. The number of registry identification cards revoked;

E. The number of medical providers providing written certifications for qualifying patients;

F. The number of registered dispensaries; and

G. The number of principal officers, board members and employees of dispensaries.

Sec. E-9. 22 MRSA §2428, sub-§11, as amended by PL 2011, c. 407, Pt. B, §32, is further amended to read:

11. Limitation on number of dispensaries. The department shall adopt rules limiting the number and location of registered dispensaries. During the first year of operation of dispensaries the department may not issue more than one registration certificate for a dispensary in each of the 8 public health districts of the ~~department~~ Department of Health and Human Services, as defined in section 411. After review of the first full year of operation of dispensaries and periodically thereafter, the department may amend the rules on the number and location of dispensaries; however, the number of dispensaries may not be less than 8.

Sec. E-10. 22 MRSA §2430, sub-§1, as enacted by PL 2009, c. 631, §45 and affected by §51, is amended to read:

1. Fund established. The Medical Use of Marijuana Fund, referred to in this section as "the fund," is established as an Other Special Revenue Funds account in the ~~Department of Health and Human Services~~ department for the purposes specified in this section.

Sec. E-11. Transfer of funds; Medical Use of Marijuana Fund. Notwithstanding any other provision of law to the contrary, the State Controller, no later than 5 days after the effective date of this Act, shall transfer the balance of the Medical Use of Marijuana Fund in the Department of Health and Human Services to the Medical Use of Marijuana Fund in the Department of Administrative and Financial Services.

Sec. E-12. Transition. The following provisions govern the transfer of the administration of the Maine Medical Use of Marijuana Act from the Department of Health and Human Services to the Department of Administrative and Financial Services.

1. The Department of Administrative and Financial Services is the successor in every way to the powers, duties and functions of the Department of Health and Human Services under the Maine Revised Statutes, Title 22, chapter 558-C. The Department of Administrative and Financial Services may enter into a memorandum of understanding with the Department of Health and Human Services to facilitate the transition of the administration of the program adopted pursuant to Title 22, chapter 558-C.

2. All existing rules, regulations and procedures in effect, in operation or adopted by the Department of Health and Human Services or any of its administrative units or officers pursuant to Title 22, chapter 558-C are hereby declared in effect and continue in effect until rescinded, revised or amended by the proper authority. All rules, regulations and procedures previously administered by the Department of Health and Human Services pursuant to Title 22, chapter 558-C are administered by the Department of Administrative and Financial Services.

3. All existing contracts, agreements, compacts and registrations in effect under the authority of the Department of Health and Human Services under Title 22, chapter 558-C continue in effect until they expire by their own terms or are altered by the parties involved.

4. Notwithstanding any provision of law to the contrary, all accrued expenditures, assets, liabilities, balances of appropriations, allocations, transfers, revenues or other available funds in an account or subdivision of an account in the Department of Health and Human Services relating to the administration of Title 22, chapter 558-C must be transferred to proper accounts in the Department of Administrative and Financial Services by the State Controller or by financial order upon the request of the State Budget Officer and with the approval of the Governor.

5. All employees of the Department of Health and Human Services who were assigned to duties related to the administration of Title 22, chapter 558-C immediately prior to the effective date of this Act become employees of the Department of Administrative and Financial Services on the effective date of this Act and retain all employee rights, privileges and benefits, including, but not limited to, accrued sick leave, vacation and seniority as provided under the Civil Service Law or collective bargaining agreements. The Department of Administrative and Financial Services shall consult with the Department of Health and Human Services to ensure orderly implementation of this subsection.

6. All records, property and equipment belonging to or allocated for the use of the Department of Health and Human Services for the purposes of Title 22, chapter 558-C become, on the effective date of this Act, part of the property of the Department of Administrative and Financial Services and must, where applicable and in a timely manner, be transferred to the Department of Administrative and Financial Services.

7. All existing forms, licenses, letterheads and similar items bearing the name of or referring to the Department of Health and Human Services as used for the purposes of Title 22, chapter 558-C may be used by the Department of Administrative and Financial Services until existing supplies of those items are exhausted.

8. On or before January 31, 2019, the Commissioner of Administrative and Financial Services, after consultation with the Commissioner of Health and Human Services, shall submit to the joint standing committee of the Legislature having jurisdiction over health and human services matters a report regarding the transition of the administration of Title 22, chapter 558-C from the Department of Health and Human Services to the Department of Administrative and Financial Services, including any recommendations for legislation necessary to complete the transition. After reviewing the report, the joint standing committee may report out legislation relating to the matters raised in the report to the First Regular Session of the 129th Legislature.

PART F

Sec. F-1. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Adult Use Marijuana Public Health and Safety Fund N270

Initiative: Provides an ongoing allocation to allow 12% of marijuana sales tax revenue and 12% of marijuana excise tax revenue to be used to facilitate public health and safety awareness and education programs and for enhanced law enforcement training programs for local, county and state law enforcement officers.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$0	\$358,416
	\$0	\$358,416
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$358,416

Adult Use Marijuana Regulatory Coordination Fund N271

Initiative: Provides funding for 6 Consumer Protection Inspector positions.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	6.000
Personal Services	\$0	\$478,806
	\$0	\$478,806
GENERAL FUND TOTAL	\$0	\$478,806

Adult Use Marijuana Regulatory Coordination Fund N271

Initiative: Provides allocations for one Public Service Coordinator I position, one Planning and Research

Associate II position, one Chemist II position and related All Other costs.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	3.000
Personal Services	\$0	\$278,017
All Other	\$0	\$100,000
	\$0	\$378,017
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$378,017

Adult Use Marijuana Regulatory Coordination Fund N271

Initiative: Provides funding for one Public Service Manager II position, one Secretary Specialist position, 4 Public Service Coordinator I positions, 4 Marijuana Enforcement Officer positions, one Marijuana Tax Auditor position and 3 Office Associate positions.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	14.000
Personal Services	\$0	\$850,000
	\$0	\$850,000
GENERAL FUND TOTAL	\$0	\$850,000

Adult Use Marijuana Regulatory Coordination Fund N271

Initiative: Provides funding for 2 Planning and Research Associate I positions, 6 Marijuana Enforcement Officer positions, 2 Marijuana Tax Auditor positions and 2 Office Associate II positions.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	12.000
Personal Services	\$0	\$700,000
	\$0	\$700,000
GENERAL FUND TOTAL	\$0	\$700,000

Adult Use Marijuana Regulatory Coordination Fund N271

Initiative: Provides an allocation for All Other costs.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$0	\$450,000
	\$0	\$450,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$450,000

Adult Use Marijuana Regulatory Coordination Fund N271

Initiative: Provides funding for a tracking/traceability system and licensing system software.

GENERAL FUND	2017-18	2018-19
All Other	\$0	\$550,000
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GENERAL FUND TOTAL	\$0	\$550,000

Medical Use of Marijuana Fund N280

Initiative: Provides an allocation for 1.2 Public Service Coordinator II positions being moved from the Medical Use of Marijuana Fund within the Department of Health and Human Services to the Medical Use of Marijuana Fund within the Department of Administrative and Financial Services.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
Personal Services	\$0	\$140,751
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OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$140,751

Medical Use of Marijuana Fund N280

Initiative: Provides an allocation for 0.5 Office Assistant II positions being moved from the Medical Use of Marijuana Fund within the Department of Health and Human Services to the Medical Use of Marijuana Fund within the Department of Administrative and Financial Services.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
Personal Services	\$0	\$29,636
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OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$29,636

Medical Use of Marijuana Fund N280

Initiative: Provides allocations for one Office Associate II position, one Social Services Manager I position, one Office Specialist I position and 2 Field Investigator positions being moved from the Medical Use of Marijuana Fund within the Department of Health and Human Services to the Medical Use of Marijuana Fund within the Department of Administrative and Financial Services.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	5.000

Personal Services	\$0	\$375,123
All Other	\$0	\$540,421
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OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$915,544
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Revenue Services, Bureau of 0002

Initiative: Provides funding for 2 Tax Examiner positions and related programming and All Other costs to process and audit income tax filings.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	2.000
Personal Services	\$0	\$151,272
All Other	\$0	\$443,261
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GENERAL FUND TOTAL	\$0	\$594,533

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF DEPARTMENT TOTALS

	2017-18	2018-19
GENERAL FUND	\$0	\$3,173,339
OTHER SPECIAL REVENUE FUNDS	\$0	\$2,272,364
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DEPARTMENT TOTAL - ALL FUNDS	\$0	\$5,445,703

AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF

Marijuana Regulation and Licensing Fund Z262

Initiative: Removes allocations for one Consumer Protection Inspector position, one pool vehicle and position technology costs for the transfer of regulatory authority from the Department of Agriculture, Conservation and Forestry to the Department of Administrative and Financial Services.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	(1.000)	(1.000)
Personal Services	(\$76,032)	(\$79,801)
All Other	(\$15,000)	(\$12,500)
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OTHER SPECIAL REVENUE FUNDS TOTAL	(\$91,032)	(\$92,301)

**AGRICULTURE,
CONSERVATION AND
FORESTRY, DEPARTMENT
OF**

DEPARTMENT TOTALS	2017-18	2018-19
OTHER SPECIAL REVENUE FUNDS	(\$91,032)	(\$92,301)
DEPARTMENT TOTAL - ALL FUNDS	(\$91,032)	(\$92,301)

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF**

Maine Center for Disease Control and Prevention 0143

Initiative: Provides an ongoing allocation to restore to the Department of Health and Human Services the 0.5 Office Assistant II positions that are moving with the Medical Use of Marijuana Fund as it is transferred from the Department of Health and Human Services to the Department of Administrative and Financial Services.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
Personal Services	\$0	\$29,636
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$29,636

Maternal and Child Health Block Grant Match Z008

Initiative: Provides an ongoing appropriation to restore to the Department of Health and Human Services the 1.2 Public Service Coordinator II positions that are moving with the Medical Use of Marijuana Fund as it is transferred from the Department of Health and Human Services to the Department of Administrative and Financial Services.

GENERAL FUND	2017-18	2018-19
Personal Services	\$0	\$140,751
GENERAL FUND TOTAL	\$0	\$140,751

Medical Use of Marijuana Fund Z118

Initiative: Removes the allocation for 0.5 Office Assistant II positions that are moving with the Medical Use of Marijuana Fund as it is transferred from the Department of Human Services to the Department of Administrative and Financial Services.

OTHER SPECIAL REVENUE FUNDS

Personal Services	2017-18	2018-19
	\$0	(\$29,636)
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	(\$29,636)

Medical Use of Marijuana Fund Z118

Initiative: Removes the allocation for 1.2 Public Service Coordinator II positions that are moving with the Medical Use of Marijuana Fund as it is transferred from the Department of Health and Human Services to the Department of Administrative and Financial Services.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
Personal Services	\$0	(\$140,751)
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	(\$140,751)

Medical Use of Marijuana Fund Z118

Initiative: Deallocates for one Office Associate II position, one Social Services Manager I position, one Office Specialist I position and 2 Field Investigator positions being moved from the Medical Use of Marijuana Fund within the Department of Health and Human Services to the Medical Use of Marijuana Fund within the Department of Administrative and Financial Services.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	(5.000)
Personal Services	\$0	(\$375,123)
All Other	\$0	(\$540,421)
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	(\$915,544)

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF**

DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$0	\$140,751
OTHER SPECIAL REVENUE FUNDS	\$0	(\$1,056,295)
DEPARTMENT TOTAL - ALL FUNDS	\$0	(\$915,544)

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: Adjusts funding to reflect an estimated decrease of \$75,000 annually to reflect fewer cases of assigned counsel related to marijuana offenses.

GENERAL FUND	2017-18	2018-19
All Other	\$0	(\$75,000)
GENERAL FUND TOTAL	\$0	(\$75,000)

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$0	(\$75,000)
DEPARTMENT TOTAL - ALL FUNDS	\$0	(\$75,000)

LEGISLATURE

Legislature 0081

Initiative: Appropriates funds for the ongoing costs of Legislators serving on the Marijuana Advisory Commission.

GENERAL FUND	2017-18	2018-19
Personal Services	\$0	\$880
All Other	\$0	\$1,370
GENERAL FUND TOTAL	\$0	\$2,250

LEGISLATURE

DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$0	\$2,250
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$2,250

PUBLIC SAFETY, DEPARTMENT OF

State Police 0291

Initiative: Provides funding for one Identification Specialist II position and related costs to process criminal history background checks for marijuana establishment operators.

GENERAL FUND	2017-18	2018-19

POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	\$0	\$42,135
All Other	\$0	\$1,566

GENERAL FUND TOTAL	\$0	\$43,701
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HIGHWAY FUND	2017-18	2018-19
Personal Services	\$0	\$22,688
All Other	\$0	\$1,274

HIGHWAY FUND TOTAL	\$0	\$23,962
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PUBLIC SAFETY, DEPARTMENT OF

DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$0	\$43,701
HIGHWAY FUND	\$0	\$23,962
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$67,663

SECTION TOTALS	2017-18	2018-19
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GENERAL FUND	\$0	\$3,285,041
HIGHWAY FUND	\$0	\$23,962
OTHER SPECIAL REVENUE FUNDS	(\$91,032)	\$1,123,768

SECTION TOTAL - ALL FUNDS	(\$91,032)	\$4,432,771
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Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective May 2, 2018.

**CHAPTER 410
S.P. 475 - L.D. 1388**

An Act To Prohibit the Falsification of Medical Records

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

Sec. 1. 17-A M.R.S.A. §707-A is enacted to read:

§707-A. Falsifying health care records

1. A person is guilty of falsifying health care records if, with intent to deceive any person or governmental entity, the person:

A. Makes, or causes to be made, a false material entry in the health care records maintained by a health care provider;

B. Alters, erases, obliterates, deletes, removes or destroys a true material entry in the health care records maintained by a health care provider;

C. Knowingly omits to make a true material entry in the health care records maintained by a health care provider in violation of a duty to do so that is imposed by statute, standard of care or regulatory provision; or

D. Prevents the making of a true material entry or causes the omission of a true material entry in the health care records maintained by a health care provider.

2. Supplementation of information or correction of an error in health care records in a manner that reasonably discloses that the supplementation or correction was performed and that does not conceal or alter prior entries is not a violation of this section.

3. Falsifying health care records is a Class D crime, except as provided in subsection 4.

4. Falsifying health care records is a Class C crime if any reliance on a violation of this section causes serious bodily injury or impairment of the mental or behavioral condition of any person.

5. As used in this section, the following definitions apply.

A. "Health care provider" means a hospital, clinic, nursing home or other facility in which skilled nursing care or medical services are prescribed by or performed under the general direction of persons licensed to practice medicine, dentistry, podiatry or surgery in this State and that is licensed or otherwise authorized by the laws of this State.

B. "Health care record" means a record that relates to an individual's physical, mental or behavioral condition, personal or family medical history or medical treatment or the health care provided to that individual.

C. "Material" means capable of altering the course or outcome of any subsequent reliance on the health care record.

See title page for effective date.

CHAPTER 411

H.P. 824 - L.D. 1187

An Act To Amend the Child Protective Services Statutes

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

Sec. 1. 18-A MRSA §9-308, sub-§(e), as amended by PL 2001, c. 696, §9, is further amended to read:

(e). The department shall notify the grandparents of a child when the child is placed for adoption if the department has received notice that the grandparents were granted reasonable rights of visitation or access under Title 19-A, chapter 59 or Title 22, section 4005-E 4005-H.

Sec. 2. 22 MRSA §4002, sub-§1-C is enacted to read:

1-C. Best interest of the child. "Best interest of the child," "best interests of the child," "child's best interest" and "child's best interests" mean the standard of the best interest of the child according to the factors set forth in Title 19-A, section 1653, subsection 3.

Sec. 3. 22 MRSA §4002, sub-§5-C is enacted to read:

5-C. Grandparent. "Grandparent" means the parent of a child's parent.

Sec. 4. 22 MRSA §4002, sub-§9-B, as amended by PL 2007, c. 371, §1, is further amended to read:

9-B. Relative. "Relative" means ~~the biological or adoptive parent of the child's biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of a family member related to the child~~ within the 3rd degree through parentage established under Title 19-A, chapter 61 or any spouse of that family member. "Relative" also includes the adoptive parent of the child's siblings. "Relative" includes, for an Indian child as defined by the Indian Child Welfare Act of 1978, 25 United States Code, Section 1903, Subsection 4, an extended family member as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, an extended family member as defined by the Indian Child Welfare Act of 1978, 25 United States Code, Section 1903, Subsection 2.

Sec. 5. 22 MRSA §4003, sub-§2, as enacted by PL 1979, c. 733, §18, is amended to read:

2. Removal from parental custody. Provide that children will be ~~taken~~ removed from the custody of their parents only where failure to do so would jeopardize their health or welfare;

Sec. 6. 22 MRSA §4003, sub-§3-A, as enacted by PL 2005, c. 374, §1, is amended to read:

3-A. Kinship placement. ~~Place~~ Consistent with sections 4005-G and 4005-H, place children who are ~~taken~~ removed from the custody of their parents with an adult relative when possible;

Sec. 7. 22 MRSA §4003, sub-§3-B is enacted to read:

3-B. Sibling placement. Consistent with sections 4005-G and 4005-H, place children who are removed from the custody of their parents with as many of those children's siblings as possible;

Sec. 8. 22 MRSA §4005-D, sub-§1, ¶B, as enacted by PL 2001, c. 696, §16, is amended to read:

B. ~~"Grandparent" means the biological or adoptive parent of a child's biological or adoptive parent~~ "Grandparent." "Grandparent," in addition to the meaning set forth in section 4002, subsection 5-C, includes the a parent of a child's parent whose parental rights have been terminated, but only until the child is placed for adoption.

Sec. 9. 22 MRSA §4005-D, sub-§2, as enacted by PL 2001, c. 696, §16, is amended to read:

2. Interested persons. Upon request, the court shall designate a foster parent, grandparent, preadoptive parent or a relative of a child ~~by blood or marriage~~ as an interested person unless the court finds good cause not to do so. The court may also grant interested person status to other individuals who have a significant relationship to the child, including, but not limited to, teachers, coaches, counselors or a person who has provided or is providing care for the child.

Sec. 10. 22 MRSA §4005-E, as amended by PL 2007, c. 513, §5, is repealed.

Sec. 11. 22 MRSA §§4005-G and 4005-H are enacted to read:

§4005-G. Department responsibilities regarding kinship and sibling placement

1. Kinship preference. Except as provided in subsections 3, 5 and 6, in the residential placement of a child, the department shall give preference to an adult relative over a nonrelated caregiver when determining placement for a child, as long as the adult relative meets all relevant state child protection standards.

2. Sibling preference. Except as provided in subsection 3, in the residential placement of a child, the department shall make reasonable efforts to place a child with all of the child's siblings at the earliest possible time unless the placement is contrary to the safety or well-being of the child or one or more of the siblings. If placing a child with all of the child's siblings is impossible or contrary to the safety or well-being of the child or one or more of the siblings, the

department shall place the child with as many of the child's siblings as is possible and consistent with the safety and well-being of the child and the siblings.

3. Exception; reunification. The department is not required to apply the placement preferences in subsections 1 and 2 if documented facts support the conclusion that the placement will interfere with active reunification under section 4041. If the court orders the department not to commence reunification or to cease reunification or if the court terminates parental rights pursuant to section 4055, the department must apply the placement preferences in subsections 1 and 2.

4. Identification of adult relatives. Prior to filing a child protection petition under section 4032, the department shall exercise due diligence to ask each individual that the department has identified as a parent of a child that is the subject of the petition to provide the names and contact information of the following:

A. Relatives who have provided care for the child on a temporary basis in the past;

B. Relatives who the parent believes would be safe caregivers during family reunification under section 4041; and

C. Relatives who the parent believes would be able to serve as a safe resource to support family reunification under section 4041, including by safely supervising visits between the parent and the child.

The department shall include the names and contact information of relatives identified by a parent in the petition pursuant to section 4032, subsection 2, paragraphs J and K. When the department identifies or locates a parent after filing the petition, the department shall exercise due diligence to ask that parent to provide the names and contact information of relatives as required by this subsection as soon as possible.

5. Background check. Within 14 days of receiving information about a relative pursuant to subsection 4, the department shall conduct a background check on that relative unless the relative has informed the department that the relative does not want to provide a residential placement for the child or to serve as a safe resource under subsection 4, paragraph C for the child. The background check must include, at a minimum, obtaining public criminal history record information as defined in Title 16, section 703, subsection 8 from the Maine Criminal Justice Information System and determining whether the relative has been the subject of a child abuse and neglect finding in this or another state.

Notwithstanding any other provision of this chapter, the department is not required to consider residential

placement of the child with a relative or use a relative as a safe resource under subsection 4, paragraph C if:

A. The department has substantiated any report of child abuse or neglect regarding that relative or a substantially equivalent determination regarding that relative has been made in another state; or

B. The relative has been convicted of a criminal offense relevant to the relative's ability to provide a safe placement for the child or serve as a safe resource under subsection 4, paragraph C.

6. License as a family foster home. The department is not required to consider residential placement of a child with a relative who does not exercise due diligence to obtain a license as a family foster home, including by applying for a license, attending all required trainings, cooperating with a home study and promptly addressing any problems identified by the department that prevent the department from granting the license. The department is also not required to consider or to continue residential placement of a child with a relative who has exercised due diligence to obtain a license as a family foster home but whose application for a license has been denied. As used in this subsection, "family foster home" has the same meaning as in section 8101, subsection 3.

§4005-H. Relatives; visitation or access; placement by court

1. Grandparent visitation or access. A grandparent who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to grant reasonable rights of visitation or access. When a child is placed in a prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement, a grandparent's rights of visitation or access that were granted pursuant to this chapter are suspended unless a court determines that it is in the best interest of the child to continue the grandparent's rights of visitation or access. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Title 18-A, section 9-308. Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when a court has previously ordered rights of visitation or access.

For the purposes of this subsection, "grandparent" includes a parent of a child's parent whose parental rights have been terminated, but only until the child is adopted.

2. Placement by court. A relative may request that the court order that the department place a child with that relative in accordance with this subsection.

A. A relative who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request either orally or in writing that the court order that the child be placed with that relative. A relative who has not been designated as an interested person, a participant or an intervenor may request in writing that the child be placed with that relative.

B. If one or more relatives request placement under paragraph A, the court may by order refer the relatives to mediation with the foster parents, if the child has been placed with foster parents, and the guardian ad litem. The court may order the department to attend the mediation. The order must designate the mediator and specify responsibility for the costs of mediation. An agreement reached by the parties through mediation involving placement or visitation must be reduced to writing, signed by all parties and presented to the court. The court shall consider but is not bound by an agreement under this paragraph.

C. In making a decision on a request under paragraph A, the court shall, consistent with section 4003, place the child with a relative who made a request if that placement is in the best interest of the child.

D. If a court order placing a child with a relative under paragraph C is made part of a permanency planning order entered pursuant to section 4038-B, subsection 3, placement with that relative is the preferred placement in all future proceedings on the child protection petition with respect to the child unless evidence is presented that remaining in that placement will negatively affect the child's emotional or physical health, safety, stability or well-being.

3. Conviction or adjudication for certain sex offenses; presumption. There is a rebuttable presumption that the relative would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the relative:

A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the relative was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presump-

tion applies regardless of the ages of the relative and the minor victim at the time of the offense; or

B. Has been adjudicated in an action under this chapter of sexually abusing a person who was a minor at the time of the abuse.

The relative seeking visitation with or access to the child may produce evidence to rebut the presumption.

Sec. 12. 22 MRSA §4038-E, sub-§10, ¶C, as enacted by PL 2011, c. 402, §15, is amended to read:

C. If the judge is satisfied by a preponderance of the evidence with the identity and relations of the parties, the ability of the permanency guardian to bring up and educate the child properly and the fitness and propriety of the adoption and that the adoption is in the best interest of the child, the judge shall grant the adoption setting forth the facts and ordering that from that date the child is the child of the permanency guardian and must be accorded that status set forth in subsection 12 and that the child's name is changed, without requiring public notice of that change.

After the adoption has been granted, the department shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

The department shall notify the biological parents whose parental rights have been terminated and grandparents who were granted reasonable rights of visitation or access pursuant to section ~~4005-E~~ 4005-H or Title 19-A, section 1803.

Sec. 13. 22 MRSA §4062, sub-§4, as enacted by PL 1999, c. 382, §1, is amended to read:

4. Kinship and sibling preferences. In the residential placement of a child, the department shall ~~consider giving preference to an adult relative over a non-related caregiver when determining placement for a child, as long as the related caregiver meets all relevant state child protection standards~~ comply with section 4005-G.

See title page for effective date.

CHAPTER 412

S.P. 58 - L.D. 166

An Act To Increase Reimbursement for Child Care Services

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

Sec. 1. 22 MRSA §3737, sub-§4 is enacted to read:

4. Child care rates. The department shall establish payment rates for child care services that are up to the 75th percentile of local market rates for the various categories of child care services. The payment rates for child care services for children with special needs may be higher than the 75th percentile of local market rates.

Sec. 2. 22 MRSA §3762, sub-§3, ¶B, as amended by PL 2017, c. 284, Pt. NNNNNNN, §10 and c. 290, §1, is further amended to read:

B. The department may use funds, insofar as resources permit, provided under and in accordance with the United States Social Security Act or state funds appropriated for this purpose or a combination of state and federal funds to provide assistance to families under this chapter. In addition to assistance for families described in this subsection, funds must be expended for the following purposes:

(1) To continue the pass-through of the first \$50 per month of current child support collections and the exclusion of the \$50 pass-through from the budget tests and benefit calculations;

(2) To provide financial assistance to noncitizens legally admitted to the United States who are receiving assistance under this subsection as of July 1, 2011. Recipients of assistance under this subparagraph are limited to the categories of noncitizens who would be eligible for the TANF programs but for their status as aliens under PRWORA. Eligibility for the TANF program for these categories of noncitizens must be determined using the criteria applicable to other recipients of assistance from the TANF program. Any household receiving assistance as of July 1, 2011 may continue to receive assistance, as long as that household remains eligible, without regard to interruptions in coverage or gaps in eligibility for service. A noncitizen legally admitted to the United States who is neither receiving assistance on July 1, 2011 nor has an application pending for assistance on July 1, 2011 that is later approved is not eligible for financial assistance through a state-funded program unless that noncitizen is:

(a) Elderly or disabled, as described under the laws governing supplemental security income in 42 United States Code, Sections 1381 to 1383f (2010);

(b) A victim of domestic violence;

(c) Experiencing other hardship, such as time necessary to obtain proper work documentation, as defined by the department by rule. Rules adopted by the

department under this division are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A; or

(d) Unemployed but has obtained proper work documentation, as defined by the department by rule. Rules adopted by the department under this division are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A;

(3) To provide benefits to certain 2-parent families whose deprivation is based on physical or mental incapacity;

(4) To provide an assistance program for needy children, 19 to 21 years of age, who are in full-time attendance in secondary school. The program is operated for those individuals who qualify for TANF under the United States Social Security Act, except that they fail to meet the age requirement, and is also operated for the parent or caretaker relative of those individuals. Except for the age requirement, all provisions of TANF, including the standard of need and the amount of assistance, apply to the program established pursuant to this subparagraph;

(5) To provide assistance for a pregnant woman who is otherwise eligible for assistance under this chapter, except that she has no dependents under 19 years of age. An individual is eligible for the monthly benefit for one eligible person if the medically substantiated expected date of the birth of her child is not more than 90 days following the date the benefit is received;

(6) To provide a special housing allowance for TANF families whose shelter expenses for rent, mortgage or similar payments, homeowners insurance and property taxes equal or exceed 50% of their monthly income. The special housing allowance is limited to \$200 per month for each family. For purposes of this subparagraph, "monthly income" means the total of the TANF monthly benefit and all income countable under the TANF program, plus child support received by the family, excluding the \$50 pass-through payment;

(7) In determining benefit levels for TANF recipients who have earnings from employment, the department shall disregard from monthly earnings the following:

- (a) One hundred and eight dollars;
- (b) Fifty percent of the remaining earnings that are less than the federal poverty level; and

(c) All actual child care costs necessary for work, except that the department may limit the child care disregard to \$175 per month per child or \$200 per month per child under 2 years of age or with special needs;

(7-A) In determining eligibility and benefit levels, the department may apply a gross income test only to applicants and not to recipients;

(7-B) In addition to the earned income disregards provided in subparagraph (7), a TANF recipient who enters employment must receive a one-time employment incentive payment of \$400 if that TANF recipient retains employment for the subsequent 4 months after entering employment, to be paid at the end of that 4-month period. This subparagraph is repealed December 31, 2018;

(8) In cases when the TANF recipient has no child care cost, the monthly TANF benefit is the maximum payment level or the difference between the countable earnings and the standard of need established by rule adopted by the department, whichever is lower;

(9) In cases when the TANF recipient has child care costs, the department shall determine a total benefit package, including TANF cash assistance, determined in accordance with subparagraph (7) and additional child care assistance, as provided by rule, necessary to cover the TANF recipient's actual child care costs up to the maximum amount specified in section 3782-A, subsection 5, paragraph B. The benefit amount must be paid as provided in this subparagraph.

(a) Before the first month in which child care assistance is available to an ASPIRE-TANF recipient under this paragraph and periodically thereafter, the department shall notify the recipient of the total benefit package and the following options of the recipient: to receive the total benefit package directly; or to have the department pay the recipient's child care assistance directly to the designated child care provider for the recipient and pay the balance of the total benefit package to the recipient.

(b) If an ASPIRE-TANF recipient notifies the department that the recipient chooses to receive the child care assistance directly, the department shall pay the total benefit package to the recipient.

(c) If an ASPIRE-TANF recipient does not respond or notifies the department of

the choice to have the child care assistance paid directly to the child care provider from the total benefit package, the department shall pay the child care assistance directly to the designated child care provider for the recipient. The department shall pay the balance of the total benefit package to the recipient;

(10) Child care assistance under this paragraph must be paid by the department in a prompt manner that permits an ASPIRE-TANF recipient to access child care necessary for work; and

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

Sec. 3. 22 MRSA §3762, sub-§8, ¶E, as enacted by PL 2009, c. 291, §6, is repealed and the following enacted in its place:

E. The department shall establish payment rates for child care services that are up to the 75th percentile of local market rates for the various categories of child care services. The payment rates for child care services for children with special needs may be higher than the 75th percentile of local market rates.

Sec. 4. 22 MRSA §3782-A, sub-§5, as enacted by PL 1997, c. 530, Pt. A, §19, is repealed and the following enacted in its place:

5. Child care during participation in employment, education and training. The department shall provide child care in accordance with federal law and this Title when the child care is necessary to permit a TANF-eligible family member to participate in the ASPIRE-TANF program.

A. The department shall establish payment rates for child care services that are up to the 75th percentile of local market rates for the various categories of child care services. The payment rates for child care services for children with special needs may be higher than the 75th percentile of local market rates.

B. The department shall provide an ASPIRE-TANF program participant's actual cost for child care up to the maximum rate authorized by federal law. In determining the maximum rate, the State shall use a method that results in an amount that equals, or most closely approaches, the actual market rate in different regions of the State for various types of child care services received by families in the State participating in the ASPIRE-TANF program.

Sec. 5. PL 2011, c. 380, Pt. UU is repealed.

Sec. 6. Increasing child care center rates with additional federal funding. Any increased federal funding received by the State from increases to discretionary spending for subsidized child care for low-income families in a child care and development block grant from the enactment of the federal Bipartisan Budget Act of 2018, PL 115-123, and any subsequent funding legislation, must be used to increase reimbursement rates to child care centers up to the 75th percentile of local market rates for child care services. Payment rates for child care services for children with special needs may be higher than the 75th percentile of local market rates.

See title page for effective date.

CHAPTER 413

H.P. 1209 - L.D. 1756

An Act To Allow The Maine Educational Center for the Deaf and Hard of Hearing and Governor Baxter School for the Deaf To Lease Space to Maine's Protection and Advocacy Agency for Persons with Disabilities

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

Whereas, pursuant to the deed of gift from Governor Baxter, Mackworth Island was given to the State as trustee in trust for the benefit of the people of the State for state public purposes; and

Whereas, there are unused school facilities at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf on Mackworth Island; and

Whereas, the Legislature finds that it would serve a state public purpose to lease these unused school facilities to the protection and advocacy agency for persons with disabilities designated by the Governor, which provides services for deaf and hard-of-hearing adults and children and other citizens of the State with disabilities; and

Whereas, this legislation authorizes the Department of Administrative and Financial Services to enter into agreements to lease these unused school facilities consistent with state law regarding excess state property; and

Whereas, this legislation needs to take effect in time to allow for the lease of the unused school facilities by May 1, 2018; 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. 20-A MRSA §7407, sub-§6, as amended by PL 2005, c. 600, §1, is further amended to read:

6. Collection of fees. The school board may charge service and rental fees for use of facilities of the school. Except as provided in ~~subsection~~ subsections 12-A and 12-B, any funds received for service and rental fees must be retained by the school.

Sec. 2. 20-A MRSA §7407, sub-§12-B is enacted to read:

12-B. Lease of school property to State's protection and advocacy agency. The Department of Administrative and Financial Services may enter into lease agreements in accordance with state law and policy on the lease of state-owned facilities, including but not limited to the provisions of Title 5, chapter 154, to lease school property to the protection and advocacy agency for persons with disabilities designated pursuant to Title 5, section 19502. Any funds received pursuant to this subsection must first be applied in accordance with Title 5, section 1784. Any excess revenue above the requirements of Title 5, section 1784 may be retained by the school to be applied to statutorily authorized programs.

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

Effective May 2, 2018.

CHAPTER 414

H.P. 1285 - L.D. 1848

An Act To Extend Arrearage Management Programs

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

Sec. 1. 35-A MRSA §3214, sub-§2-A, as enacted by PL 2013, c. 556, §1, is amended to read:

2-A. Arrearage management program. Each investor-owned transmission and distribution utility shall implement pursuant to this subsection an arrear-

age management program to assist eligible low-income residential customers who are in arrears on their electricity bills. An arrearage management program implemented pursuant to this subsection is a plan under which a transmission and distribution utility works with an eligible low-income residential customer to establish an affordable payment plan and provide credit to that customer toward the customer's accumulated arrears as long as that customer remains in compliance with the terms of the program. If a consumer-owned transmission and distribution utility elects to implement an arrearage management program, it must do so in accordance with this subsection and rules adopted pursuant to this subsection. The commission shall establish requirements relating to the arrearage management programs by rule. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

In adopting rules regarding arrearage management programs, the commission shall:

- A. Consider best practices as developed and implemented in other states or regions;
- B. Require that an arrearage management program include an electricity usage assessment at no cost to the participant;
- ~~C. Permit each transmission and distribution utility to propose a start date for its program that is no later than October 1, 2015;~~
- D. Ensure that ~~each~~ a transmission and distribution utility develops terms and conditions for its arrearage management program in a manner that is consistent with the program's objectives and is in the best interests of all ratepayers; and
- E. Ensure that a transmission and distribution utility recovers in rates all reasonable costs of arrearage management programs, including ~~incremental costs, reconnection fees and administrative and marketing costs but not including the amount of any arrearage forgiven that is treated as bad debt for purposes of cost recovery by the transmission and distribution utility;~~
 - (1) Incremental costs;
 - (2) Reconnection fees;
 - (3) Administrative costs;
 - (4) Marketing costs;
 - (5) Costs for any 3rd-party assistance it receives in administering its arrearage management program; and
 - (6) Costs for providing financial and budgetary guidance to participants whether provided directly or through a 3rd party contracted by

the transmission and distribution utility to provide that guidance.

The amount of any arrearage forgiven that is treated as bad debt for purposes of cost recovery by the transmission and distribution utility may not be included as a reasonable cost under this paragraph.

The Efficiency Maine Trust shall work with investor-owned transmission and distribution utilities, consumer-owned transmission and distribution utilities that elect to participate in an arrearage management program and other stakeholders to provide access to a complementary low-income energy efficiency program for participants in arrearage management programs in order to help reduce participants' energy consumption.

No later than January 28, ~~2018~~ 2021, the commission shall prepare a report assessing the effectiveness of arrearage management programs, including the number of participants enrolled in the programs, the number of participants completing the programs, the number of participants who have failed to complete the programs, the payment patterns of participating customers after completing the programs, the dollar amount of arrears forgiven, a comparison of outcomes for those participating in the programs and those not participating, the impact on a any participating transmission and distribution utility's bad debt as a result of the programs, the costs and benefits to all ratepayers associated with the programs and recommendations for ways in which the programs might be improved or continued for the benefit of all ratepayers. In preparing its report, the commission shall hold at least one formal stakeholder meeting involving affected parties, including the Office of the Public Advocate and the participating transmission and distribution utilities. Parties must also be provided an opportunity to submit written comments to the commission regarding the performance of the programs.

The joint standing committee of the Legislature having jurisdiction over utilities matters may report out a bill relating to the commission report to the ~~Second~~ First Regular Session of the ~~128th~~ 130th Legislature.

This subsection is repealed September 30, ~~2018~~ 2021.

Sec. 2. 35-A MRSA §10110, sub-§2, ¶L, as enacted by PL 2013, c. 556, §2, is amended to read:

L. Pursuant to section 3214, subsection 2-A, the trust shall work with investor-owned transmission and distribution utilities, consumer-owned transmission and distribution utilities that elect to participate in an arrearage management program pursuant to section 3214, subsection 2-A and other stakeholders to provide access to a complementary low-income energy efficiency program for participants in the arrearage management pro-

grams in order to help reduce participants' energy consumption.

This paragraph is repealed September 30, ~~2018~~ 2021.

See title page for effective date.

**CHAPTER 415
S.P. 658 - L.D. 1771**

An Act To Stabilize Vulnerable Families

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

Sec. 1. 5 MRSA §20054 is enacted to read:

§20054. Integrated treatment and recovery for families

The department shall develop and fund housing-based programs employing evidence-based strategies in a holistic approach to recovery for vulnerable families affected by substance abuse. The programs must treat mothers affected by substance abuse who have at least one child under 10 years of age when entering the program in an integrated family care model. The programs must provide to a mother in the program stable housing and comprehensive services that support recovery and unification with that mother's children. Comprehensive services provided include all of the following: care coordination, health care, child care, early childhood education, home supports, after-school programming, parenting education, treatment for mental health and substance abuse, postsecondary education, community-based transportation and employment supports. The programs must include coordinated data collection to assess long-term recovery outcomes, transition to employment and independence for mothers participating in the programs.

Sec. 2. Department of Health and Human Services to issue requests for proposals. No later than January 1, 2019, the Department of Health and Human Services shall issue requests for proposals to develop, pursuant to the Maine Revised Statutes, Title 5, section 20054, 2 housing-based programs for mothers affected by substance abuse who have children under 10 years of age.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF
Child Care Services 0563**

Initiative: Provides allocations for child care services in the integrated treatment and recovery for families program.

FEDERAL BLOCK GRANT FUND	2017-18	2018-19
All Other	\$0	\$866,611
<hr/>		
FEDERAL BLOCK GRANT FUND TOTAL	\$0	\$866,611

Office of Substance Abuse and Mental Health Services Z199

Initiative: Provides allocations for contracted services in the integrated treatment and recovery for families program.

FEDERAL BLOCK GRANT FUND	2017-18	2018-19
All Other	\$0	\$215,000
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FEDERAL BLOCK GRANT FUND TOTAL	\$0	\$215,000

HEALTH AND HUMAN SERVICES, DEPARTMENT OF DEPARTMENT TOTALS

FEDERAL BLOCK GRANT FUND	2017-18	2018-19
FEDERAL BLOCK GRANT FUND	\$0	\$1,081,611
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DEPARTMENT TOTAL - ALL FUNDS	\$0	\$1,081,611

See title page for effective date.

**CHAPTER 416
S.P. 639 - L.D. 1740**

An Act Regarding Criminal Forced Labor, Aggravated Criminal Forced Labor, Sex Trafficking and Human Trafficking

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

Sec. 1. 5 MRSA §4701, sub-§1, ¶C, as repealed and replaced by PL 2013, c. 407, §1, is amended to read:

C. "Human trafficking offense" includes:

(1) Aggravated sex trafficking and sex trafficking under Title 17-A, sections 852 and 853, respectively, and criminal forced labor and aggravated criminal forced labor under Title 17-A, sections 304 and 305, respectively; and

(2) All offenses in Title 17-A, chapters 11, 12 and 13 if accompanied by the destruction, concealment, removal, confiscation or possession of any actual or purported passport or other immigration document or other actual or purported government identification document of the other person or done using any scheme, plan or pattern intended to cause the other person to believe that if that person does not perform certain labor or services, including prostitution, that the person or a 3rd person will be subject to a harm to their health, safety or immigration status.

Sec. 2. 17-A MRSA §§304 and 305 are enacted to read:

§304. Criminal forced labor

1. A person is guilty of criminal forced labor if the actor, without the legal right to do so, intentionally or knowingly:

A. Withholds or threatens to withhold a scheduled drug or alcohol from a person who is in a state of psychic or physical dependence, or both, arising from the use of the drug or alcohol on a continuing basis in order to compel that person to provide labor or services having economic value;

B. Withholds or threatens to withhold a substance or medication from a person who has a prescription or medical need for the substance or medication in order to compel that person to provide labor or services having economic value;

C. Uses a person's physical or mental impairment that has substantial adverse effects on that person's cognitive or volitional functions as a means to compel that person to provide labor or services having economic value;

D. Makes material false statements, misstatements or omissions in order to compel a person to provide labor or services having economic value;

E. Withholds, destroys or confiscates an actual or purported passport or other immigration document or other actual or purported government identification document in order to compel a person to provide labor or services having economic value;

F. Compels a person to provide labor or services having economic value to retire, repay or service an actual or purported debt if:

(1) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(2) The length of labor or services is not limited and the nature of the labor or services is not defined; or

G. Uses force or engages in any scheme, plan or pattern to instill in a person a fear that, if that person does not provide labor or services having economic value, the actor or another person will:

(1) Cause physical injury to or death of a person;

(2) Cause destruction of or consequential damage to property, other than property of the actor;

(3) Engage in other conduct constituting a Class A, B or C crime or criminal restraint;

(4) Accuse a person of a crime or cause criminal charges or deportation proceedings to be instituted against a person;

(5) Expose a secret or publicize an asserted fact, regardless of veracity, that would subject a person, except the actor, to hatred, contempt or ridicule;

(6) Testify or provide information or withhold testimony or information regarding a person's legal claim or defense;

(7) Use a position as a public servant to perform some act related to an official duty or fail or refuse to perform an official duty in a manner that affects a person; or

(8) Perform any other act that would not in itself materially benefit the actor but that is calculated to harm the person being compelled with respect to that person's health, safety or immigration status.

2. Criminal forced labor is a Class C crime.

3. It is an affirmative defense to prosecution under this section that the person engaged in criminal forced labor because the person was compelled to do so as described in subsection 1.

§305. Aggravated criminal forced labor

1. A person is guilty of aggravated criminal forced labor if the actor violates section 304 and the person compelled to provide labor or services having economic value has not in fact attained 18 years of age.

2. Aggravated criminal forced labor is a Class B crime.

3. It is an affirmative defense to prosecution under this section that the person engaged in aggravated

criminal forced labor because the person was compelled to do so as described in section 304, subsection 1.

Sec. 3. 17-A MRSA §853, sub-§3 is enacted to read:

3. It is an affirmative defense to prosecution under this section that the person engaged in sex trafficking because the person was compelled to do so as described in section 852, subsection 2.

Sec. 4. 26 MRSA c. 7, sub-c. 12 is enacted to read:

SUBCHAPTER 12

HUMAN TRAFFICKING AWARENESS SIGNS

§879. Human trafficking awareness signs

1. Department provides public awareness signs. The Department of Labor shall provide the Department of Transportation, the Maine Turnpike Authority and each employer in the State that is a business or employer listed in subsection 3 with public awareness signs that contain a telephone number for a national human trafficking hotline.

2. Departments posting public awareness signs. The Department of Transportation and the Maine Turnpike Authority shall work cooperatively and shall post and keep posted in a conspicuous manner in every transportation center and every highway rest area and welcome center a public awareness sign provided by the Department of Labor pursuant to subsection 1.

3. Businesses and employers posting public awareness signs. The following businesses and employers shall post and keep posted in a conspicuous manner that is clearly visible to the public and to employees within their businesses and places of employment public awareness signs provided by the Department of Labor pursuant to subsection 1:

A. A Department of Labor career center;

B. An office that provides services under the Governor's Jobs Initiative Program under section 2031;

C. A hospital or facility providing emergency medical services that is licensed under Title 22, section 1811;

D. An eating and lodging place licensed under Title 22, chapter 562;

E. An adult entertainment nightclub or bar, adult spa, establishment featuring strippers or erotic dancers or other sexually oriented business;

F. A money transmitter licensed under Title 32, chapter 80, subchapter 1; and

G. A check cashing business or foreign currency exchange business registered under Title 32, chapter 80, subchapter 2.

4. Penalty. A person who fails to post a sign as required by subsection 3 commits a civil violation for which a fine of \$300 per violation must be adjudged.

Sec. 5. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 17-A, chapter 13, in the chapter headnote, the words "kidnapping and criminal restraint" are amended to read "kidnapping, criminal restraint and criminal forced labor" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

See title page for effective date.

CHAPTER 417

H.P. 1325 - L.D. 1892

An Act To Clarify the Prescribing and Dispensing of Naloxone Hydrochloride by Pharmacists

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

Whereas, the State is facing a crisis due to the number of deaths caused by opioid-related drug overdoses; and

Whereas, unanticipated confusion has arisen regarding the application of recently enacted laws that are intended to decrease the risks of opioid-related fatalities; and

Whereas, this legislation clarifies a perceived ambiguity in order to facilitate the unimpeded and expedient implementation of these critically important laws in order to save lives; 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. 22 MRSA §2353, sub-§2, ¶A-1, as enacted by PL 2015, c. 508, §2 and amended by PL 2017, c. 364, §2, is repealed and the following enacted in its place:

A-1. A pharmacist may prescribe and dispense naloxone hydrochloride in accordance with proto-

cols established under Title 32, section 13815 to an individual of any age at risk of experiencing an opioid-related drug overdose.

Sec. 2. 22 MRSA §2353, sub-§2, ¶A-2, as enacted by PL 2017, c. 249, §1 and repealed by c. 364, §3, is repealed.

Sec. 3. 22 MRSA §2353, sub-§2, ¶C-1, as enacted by PL 2015, c. 508, §2 and amended by PL 2017, c. 364, §4, is repealed and the following enacted in its place:

C-1. A pharmacist may prescribe and dispense naloxone hydrochloride in accordance with protocols established under Title 32, section 13815 to a person of any age who is a member of an individual's immediate family or a friend of the individual or to another person in a position to assist the individual if the individual is at risk of experiencing an opioid-related drug overdose.

Sec. 4. 22 MRSA §2353, sub-§2, ¶C-2, as enacted by PL 2017, c. 249, §1 and repealed by c. 364, §5, is repealed.

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

Effective May 2, 2018.

PRIVATE AND SPECIAL LAWS OF THE STATE OF MAINE
AS PASSED AT
THE SECOND REGULAR SESSION OF THE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
2017

CHAPTER 10
S.P. 662 - L.D. 1777
An Act To Make
Allocations from Maine
Turnpike Authority Funds for
the Maine Turnpike Authority
for the Calendar Year Ending
December 31, 2019

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

Sec. 1. Allocation. Gross revenues of the Maine Turnpike Authority for the calendar year ending December 31, 2019 must be segregated, apportioned and disbursed as designated in the following schedule.

MAINE TURNPIKE AUTHORITY 2019

Administration

Personal Services	\$1,202,292
All Other	1,589,395
TOTAL	\$2,791,687

Accounts and Controls

Personal Services	\$3,038,058
All Other	1,298,899
TOTAL	\$4,336,957

Highway Maintenance

Personal Services	\$4,786,268
All Other	3,395,826
TOTAL	\$8,182,094

Equipment Maintenance

Personal Services	\$1,280,202
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All Other 2,418,955

TOTAL **\$3,699,157**

Fare Collection

Personal Services \$10,751,168
All Other 4,339,200

TOTAL **\$15,090,368**

Public Safety and Special Services

Personal Services \$569,682
All Other 7,137,413

TOTAL **\$7,707,095**

Building Maintenance

Personal Services \$696,180
All Other 631,102

TOTAL **\$1,327,282**

Subtotal of Line Items Budgeted

General Contingency - 5% of line items budgeted for 2019 (5% allowed) \$2,156,732

MAINE TURNPIKE AUTHORITY

TOTAL REVENUE FUNDS **\$45,291,372**

Sec. 2. Transfer of allocations. Any balance of the allocation for "General Contingency" made by the Legislature for the Maine Turnpike Authority may be transferred at any time prior to the closing of the books to any other allocation or subdivision of any other allocation made by the Legislature for the use of the Maine Turnpike Authority for the same calendar year. Any balance of any other allocation or subdivision of any other allocation made by the Legislature

for the Maine Turnpike Authority that at any time is not required for the purpose named in the allocation or subdivision may be transferred at any time prior to the closing of the books to any other allocation or subdivision of any other allocation made by the Legislature for the use of the Maine Turnpike Authority for the same calendar year subject to review by the joint standing committee of the Legislature having jurisdiction over transportation matters. Financial statements describing the transfer, other than a transfer from "General Contingency," must be submitted by the Maine Turnpike Authority to the Office of Fiscal and Program Review 30 days before the transfer is to be implemented. In the case of extraordinary emergency transfers, the 30-day prior submission requirement may be waived by vote of the committee. These financial statements must include information specifying the accounts that are affected, amounts to be transferred, a description of the transfer and a detailed explanation as to why the transfer is needed.

Sec. 3. Encumbered balance at year-end. At the end of each calendar year, encumbered balances may be carried to the next calendar year.

Sec. 4. Supplemental information. As required by the Maine Revised Statutes, Title 23, section 1961, subsection 6, the following statement of the revenues in 2019 that are necessary for capital expenditures and reserves and to meet the requirements of any resolution authorizing bonds of the Maine Turnpike Authority during 2019, including debt service and the maintenance of reserves for debt service and reserve maintenance, is submitted.

Turnpike Revenue Bond Resolution Adopted April 18, 1991; Issuance of Bonds Authorized Pursuant to the Maine Revised Statutes, Title 23, section 1968, subsections 1 and 2-A	2019
Debt Service Fund	\$34,475,890
Reserve Maintenance Fund	40,000,000
General Reserve Fund, to be applied as follows:	
Capital Improvements	24,814,048

Debt Service Fund under the General Special Obligation Bond Resolution Adopted May 15, 1996; Issuance of Bonds Authorized Pursuant to the Maine Revised Statutes, Title 23, section 1968, subsection 2-A	2,442,500
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TOTAL	\$101,732,438
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See title page for effective date.

CHAPTER 11

H.P. 1160 - L.D. 1673

An Act Authorizing the Deorganization of Codyville Plantation

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

PART A

Sec. A-1. Deorganization of Codyville Plantation. Notwithstanding any contrary requirement of the Maine Revised Statutes, Title 30-A, chapter 302, if in accordance with Title 30-A, section 7207 a majority of the voters in Codyville Plantation approve the deorganization procedure developed in accordance with Title 30-A, section 7205 and if the question of Codyville Plantation's deorganization is approved by the registered voters of Codyville Plantation pursuant to section 9 of this Part, Codyville Plantation in Washington County is deorganized, except that the corporate existence, powers, duties and liabilities of the plantation survive for the purposes of prosecuting and defending all pending suits to which the plantation is, or may be, a party and all needful process arising out of any suits, including provisions for the payment of all or any judgments or debts that may be rendered against the plantation or exist in favor of any creditor.

Sec. A-2. Financial obligations and other liabilities. Any financial obligations or other liabilities that were incurred by Codyville Plantation as a municipality or that were incurred by Codyville Plantation as a member of a regional school unit, school district or school union are hereby excepted and reserved in accordance with the Maine Revised Statutes, Title 30-A, section 7303 and remain liabilities for the inhabitants of lawful age residing in the territory included in the deorganized Codyville Township for the duration of the liabilities. The State Tax Assessor shall assess taxes against the property owners in the deorganized Codyville Township to provide funds to

satisfy any municipal or educational obligations or other liabilities. These financial obligations or other liabilities are not the responsibility of either the Department of Education or the taxpayers in the Unorganized Territory Tax District as described in Title 36, chapter 115.

Sec. A-3. Deorganization procedure. The deorganization of Codyville Plantation must be conducted in accordance with the approved deorganization procedure developed in accordance with the Maine Revised Statutes, Title 30-A, section 7205.

Sec. A-4. Unexpended school funds. The treasurer of Codyville Plantation or any other person who has custody of the funds of the plantation shall pay the Treasurer of State all unexpended school funds that, together with the credits due the plantation for school purposes, are to be used by the State Tax Assessor to settle any school obligations incurred by the plantation before deorganization. The unexpended funds must be deposited by the Treasurer of State into a private trust fund under the control of the State Tax Assessor. The State Tax Assessor shall approve any written requests or invoices for payments and provide copies of the approved documents to the fiscal administrator of the unorganized territory within the Office of the State Auditor. Any unexpended school funds remaining with the Treasurer of State after all the obligations have been met must be deposited in the Unorganized Territory Education and Services Fund, as provided in the Maine Revised Statutes, Title 36, chapter 115.

Sec. A-5. Unexpended municipal funds and property. The treasurer of Codyville Plantation or any other person who has custody of the funds of the plantation shall pay the Treasurer of State all unexpended funds of the plantation that, together with the credits due the plantation for its purposes, are to be used by the State Tax Assessor to settle any obligations of the plantation incurred by the plantation before deorganization. The unexpended funds must be deposited by the Treasurer of State into a private trust fund under the control of the State Tax Assessor. The State Tax Assessor shall approve any written requests or invoices for payments and shall provide copies of the approved documents to the fiscal administrator of the unorganized territory within the Office of the State Auditor. Pursuant to the Maine Revised Statutes, Title 30-A, section 7304, at the end of the 5-year period during which the powers, duties and obligations relating to the affairs of the plantation are vested in the State Tax Assessor or when in the judgment of the State Tax Assessor final payment of all known obligations against the plantation has been made, any funds that have not been expended must be deposited with the county commissioners of Washington County as undedicated revenue for the unorganized territory fund of Washington County.

Any property of the plantation that has not been sold must be held by the State in trust for the unorganized territory or transferred to Washington County to be held in trust for the unorganized territory. Income from the use or sale of that property held by the State must be credited to or deposited in the Unorganized Territory Education and Services Fund under Title 36, chapter 115. Income from the use or sale of that property held by Washington County must be credited to the unorganized territory fund of the county pursuant to Title 36, section 1604, subsection 4.

Sec. A-6. Withdrawal from community school district. Codyville Plantation shall:

1. Assign its share of the cumulative fund balance for the East Range II Community School District to the East Range II Community School District;
2. Cancel or forgive any claims on the Town of Topsfield or the East Range II Community School District for educational property or services; and
3. Withdraw from the East Range II Community School District, effective June 30, 2019.

Upon the withdrawal of Codyville Plantation from the East Range II Community School District pursuant to this section, the unorganized territory of Codyville Township has no financial liabilities or other obligations to the Town of Topsfield or to the East Range II Community School District for educational property or services, and education in the unorganized territory of Codyville Township must be provided pursuant to section 7 of this Part.

Sec. A-7. Provision of education services. Notwithstanding any other law, education in the unorganized territory of Codyville Township must be provided under the direction of the Commissioner of Education as described in the Maine Revised Statutes, Title 20-A, chapter 119 and must meet the general standards for elementary and secondary schooling and special education established pursuant to Title 20-A. The provisions of subsections 1 to 3 must be implemented at the time of deorganization.

1. Students in prekindergarten and kindergarten to grade 5 whose parents or legal guardians are legal residents of the unorganized territory of Codyville Township must be provided educational services at a nearby school facility. Transportation services to and from the designated school must be provided under the direction of the Department of Education's division of state schools, education in the unorganized territory.
2. Students in grade 6 to grade 12 whose parents or legal guardians are legal residents of the unorganized territory of Codyville Plantation must be provided educational services at a nearby school facility. Transportation services to and from the designated school facility must be provided under the direction of

the Department of Education's division of state schools, education in the unorganized territory.

3. Special education services must be provided to identify eligible resident students as required by federal and state laws, rules and regulations. Special education services are administered by the director of special education for the division of state schools, education in the unorganized territory within the Department of Education.

Tuition to schools other than those that are identified in subsection 2 may be provided on behalf of resident students with the prior approval of the director of state schools, education in the unorganized territory within the Department of Education. Tuition may not exceed limits set out in the Maine Revised Statutes, Title 20-A, section 3304, and transportation is the responsibility of the parents or legal guardians. The receiving school must be approved by the Commissioner of Education for the purpose of tuition.

The provision of educational services under this section is subject to future modification in response to changes in educational conditions.

Sec. A-8. Assessment of taxes. The State Tax Assessor shall assess the real and personal property taxes in Codyville Plantation as of April 1, 2019 as provided in the Maine Revised Statutes, Title 36, section 1602.

Sec. A-9. Referendum; certificate to Secretary of State. This Part takes effect 90 days after its approval only for the purpose of permitting its submission by the municipal officers of Codyville Plantation to the legal voters of the plantation by ballot at the next general election to be held in November. This election must be called, advertised and conducted according to the Maine Revised Statutes, Title 30-A, sections 2528 and 2532. The plantation clerk shall prepare the required ballots on which the clerk shall reduce the subject matter of this Part to the following question:

"Shall Codyville Plantation be deorganized?"

The voters shall indicate their opinion on this question by a cross or check mark placed against the word "Yes" or "No." Before becoming effective, this Part must be approved by at least 2/3 of the legal voters casting ballots at the general election, and the total number of votes cast for and against the acceptance of this Part at the election must equal or exceed 50% of the total number of votes cast in the plantation for Governor at the last gubernatorial election.

The municipal officers of Codyville Plantation shall declare the result of the vote. The plantation clerk shall file a certificate of the election result with the Secretary of State within 10 days after the date of the election.

Sec. A-10. Effective dates. If the legal voters of Codyville Plantation approve the referendum under section 9 of this Part, sections 1 to 5, 7 and 8 of this Part take effect July 1, 2019, and section 6 of this Part takes effect upon approval of the referendum.

PART B

Sec. B-1. Register and transmit copy of approved deorganization procedure. Before the effective date of the deorganization of Codyville Plantation pursuant to Part A, the fiscal administrator of the unorganized territory within the Office of the State Auditor shall transmit a copy of the approved deorganization procedure developed in accordance with the Maine Revised Statutes, Title 30-A, section 7205 to the Washington County Administrator and register the approved deorganization procedure with the Washington County Registry of Deeds.

Sec. B-2. Effective date. This Part takes effect upon approval of the referendum under Part A, section 9.

Effective pending referendum.

CHAPTER 12

S.P. 666 - L.D. 1787

An Act To Provide for the 2018 and 2019 Allocations of the State Ceiling on Private Activity Bonds

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

Whereas, the Maine Revised Statutes, Title 10, section 363 and Private and Special Law 2017, chapter 5 make a partial allocation of the state ceiling on private activity bonds to some issuers for calendar year 2018 but leave a portion of the state ceiling unallocated and do not provide sufficient allocations for certain types of private activity bonds that may require an allocation prior to the effective date of this Act if not enacted on an emergency basis; and

Whereas, if these bond issues must be delayed due to the lack of available state ceiling, the rates and terms under which these bonds may be issued may be adversely affected, resulting in increased costs to beneficiaries or even unavailability of financing for certain projects; 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 preserva-

tion of the public peace, health and safety; now, therefore,

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

Sec. 1. Allocation to the Treasurer of State. The \$5,000,000 of the state ceiling on private activity bonds for calendar year 2018 previously allocated to the Treasurer of State remains allocated to the Treasurer of State to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 5 for calendar year 2018. Five million dollars of the state ceiling for calendar year 2019 is allocated to the Treasurer of State to be used or reallocated in accordance with Title 10, section 363, subsection 5.

Sec. 2. Allocation to the Finance Authority of Maine. The \$40,000,000 of the state ceiling on private activity bonds for calendar year 2018 previously allocated to the Finance Authority of Maine remains allocated to the Finance Authority of Maine to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 6 for calendar year 2018. Forty million dollars of the state ceiling for calendar year 2019 is allocated to the Finance Authority of Maine to be used or reallocated in accordance with Title 10, section 363, subsection 6.

Sec. 3. Allocation to the Maine Municipal Bond Bank. The \$10,000,000 of the state ceiling on private activity bonds for calendar year 2018 previously allocated to the Maine Municipal Bond Bank remains allocated to the Maine Municipal Bond Bank to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 7 for calendar year 2018. Ten million dollars of the state ceiling for calendar year 2019 is allocated to the Maine Municipal Bond Bank to be used or reallocated in accordance with Title 10, section 363, subsection 7.

Sec. 4. Allocation to the Finance Authority of Maine as successor to the Maine Educational Loan Authority. The \$15,000,000 of the state ceiling on private activity bonds for calendar year 2018 previously allocated to the Finance Authority of Maine as successor to the Maine Educational Loan Authority remains allocated to the Finance Authority of Maine to be used or reallocated in accordance with Public Law 2015, chapter 170 and with the Maine Revised Statutes, Title 10, section 363, subsection 8 for calendar year 2018. Fifteen million dollars of the state ceiling for calendar year 2019 is allocated to the Finance Authority of Maine to be used or reallocated in accordance with Title 10, section 363, subsection 8.

Sec. 5. Allocation to the Maine State Housing Authority. The \$50,000,000 of the state ceiling on private activity bonds for calendar year 2018 previously allocated to the Maine State Housing

Authority remains allocated to the Maine State Housing Authority to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 4 for calendar year 2018. Fifty million dollars of the state ceiling for calendar year 2019 is allocated to the Maine State Housing Authority to be used or reallocated in accordance with Title 10, section 363, subsection 4.

Sec. 6. Unallocated state ceiling. One hundred ninety-one million three hundred seventy-five thousand dollars of the state ceiling on private activity bonds for calendar year 2018 is unallocated and must be reserved for future allocation in accordance with applicable laws. One hundred ninety-one million three hundred seventy-five thousand dollars of the state ceiling for calendar year 2019 is unallocated and must be reserved for future allocation in accordance with applicable laws.

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

Effective March 23, 2018.

CHAPTER 13

S.P. 681 - L.D. 1814

An Act To Amend the Charter of the Lisbon Water Department

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

Sec. 1. P&SL 1903, c. 241, §6, 2nd ¶, as repealed and replaced by P&SL 2005, c. 43, Pt. A, §1 and affected by Pt. B, §1, is amended to read:

The Board of Water Commissioners consists of 3 water commissioners, all of whom must be residents of the Town of Lisbon and are elected at the annual municipal election for a term of 3 years. The term of a water commissioner elected after July 1, 2006 and before November 8, 2017 runs from July 1st of the year following the election to June 30th of the 3rd year following commencement of the term. The term of a water commissioner elected after November 7, 2017 runs from December 1st of the year of the election to November 30th of the 3rd year following commencement of the term.

Sec. 2. Transition. Notwithstanding Private and Special Law 1903, chapter 241, section 6, as amended:

1. The water commissioner of the Lisbon Water Department elected on November 7, 2017 serves for a term that runs from July 1, 2018 to November 30, 2020;

2. The term of the water commissioner whose successor is to be determined at an election held in 2018 ends November 30, 2018; and

3. The term of the water commissioner whose successor is to be determined at an election held in 2019 ends November 30, 2019.

See title page for effective date.

CHAPTER 14

H.P. 1023 - L.D. 1484

An Act Authorizing the Deorganization of the Town of Atkinson

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

PART A

Sec. A-1. Deorganization of the Town of Atkinson. Notwithstanding any contrary requirement of the Maine Revised Statutes, Title 30-A, chapter 302, if in accordance with Title 30-A, section 7207 a majority of the voters in the Town of Atkinson approve the deorganization procedure developed in accordance with Title 30-A, section 7205 and if the question of the Town of Atkinson's deorganization is approved by the registered voters of the Town of Atkinson pursuant to section 8 of this Part and if the Town of Atkinson has executed a withdrawal agreement with School Administrative District No. 41 or Regional School Unit No. 41, the Town of Atkinson in Piscataquis County is deorganized, except that the corporate existence, powers, duties and liabilities of the municipality survive for the purposes of prosecuting and defending all pending suits to which the municipality is, or may be, a party and all needful process arising out of any suits, including provisions for the payment of all or any judgments or debts that may be rendered against the municipality or exist in favor of any creditor.

Sec. A-2. Financial obligations and other liabilities. Any financial obligations or other liabilities that were incurred by the Town of Atkinson as a municipality or that were incurred by the Town of Atkinson as a member of School Administrative District No. 41 or Regional School Unit No. 41 are hereby excepted and reserved in accordance with the Maine Revised Statutes, Title 30-A, section 7303 and remain liabilities for the inhabitants of lawful age residing in the territory included in the deorganized Atkinson Township for the duration of the liabilities. The State Tax Assessor shall assess taxes against the property owners in the deorganized Atkinson Township to provide funds to satisfy any municipal or educational obligations or other liabilities. These financial obliga-

tions or other liabilities are not the responsibility of either the Department of Education or the taxpayers in the Unorganized Territory Tax District as described in Title 36, chapter 115.

Sec. A-3. Deorganization procedure. The deorganization of the Town of Atkinson must be conducted in accordance with the approved deorganization procedure for the municipality dated June 15, 2016 that was developed in accordance with the Maine Revised Statutes, Title 30-A, section 7205, and approved by a majority of municipal voters as required in Title 30-A, section 7207, subsection 2.

Sec. A-4. Unexpended school funds. The treasurer of the Town of Atkinson or any other person who has custody of the funds of the municipality shall pay the Treasurer of State all unexpended school funds that, together with the credits due the municipality for school purposes, are to be used by the State Tax Assessor to settle any school obligations incurred by the municipality before deorganization. The State Tax Assessor shall approve any written requests or invoices for payments and submit the approved documents to the fiscal administrator of the unorganized territory within the Office of the State Auditor to process through the Office of the State Controller. Any unexpended school funds remaining with the Treasurer of State after all the obligations have been met must be deposited to the Unorganized Territory Education and Services Fund, as established in the Maine Revised Statutes, Title 36, chapter 115.

Sec. A-5. Unexpended municipal funds and property. The treasurer of the Town of Atkinson or any other person who has custody of the funds of the municipality shall pay the Treasurer of State all unexpended funds of the municipality that, together with the credits due the municipality for its purposes, are to be used by the State Tax Assessor to settle any obligations of the municipality incurred by the municipality before deorganization. The State Tax Assessor shall approve any written requests or invoices for payments and shall submit the approved documents to the fiscal administrator of the unorganized territory within the Office of the State Auditor to process through the Office of the State Controller. Pursuant to the Maine Revised Statutes, Title 30-A, section 7304, at the end of the 5-year period during which the powers, duties and obligations relating to the affairs of the municipality are vested in the State Tax Assessor or when in the judgment of the State Tax Assessor final payment of all known obligations against the municipality has been made, any funds that have not been expended must be deposited with the county commissioners of Piscataquis County as undedicated revenue for the unorganized territory fund of Piscataquis County.

Any property of the municipality that has not been sold must be held by the State in trust for the unorgan-

ized territory or transferred to Piscataquis County to be held in trust for the unorganized territory. Income from the use or sale of that property held by the State must be credited to or deposited in the Unorganized Territory Education and Services Fund under Title 36, chapter 115. Income from the use or sale of that property held by Piscataquis County must be credited to the unorganized territory fund of the county pursuant to Title 36, section 1604, subsection 4.

Sec. A-6. Provision of education services.

Notwithstanding any other law, education in the unorganized territory of Atkinson Township must be provided under the direction of the Commissioner of Education as described in the Maine Revised Statutes, Title 20-A, chapter 119 and must meet the general standards for elementary and secondary schooling and special education established pursuant to Title 20-A. The provisions of subsections 1 to 5 must be implemented at the time of deorganization.

1. Students in kindergarten to grade 8 whose parents or legal guardians are legal residents of the unorganized territory of Atkinson Township must be provided educational services at school facilities located within School Administrative District No. 68 in Dover-Foxcroft. Transportation services to and from designated schools within School Administrative District No. 68 must be provided under the direction of the Department of Education's division of state schools, education in the unorganized territory.

2. Students in grade 9 to grade 12 whose parents or legal guardians are legal residents of the unorganized territory of Atkinson Township must be provided educational services at Foxcroft Academy. Transportation services to and from the secondary school must be provided under the direction of the Department of Education's division of state schools, education in the unorganized territory.

3. Tuition to secondary schools other than that identified in subsection 2 may be provided on behalf of resident students with the prior approval of the director of state schools, education in the unorganized territory within in the Department of Education. Tuition may not exceed limits set out in the Maine Revised Statutes, Title 20-A, section 3304. The receiving school must be approved by the Commissioner of Education for the purpose of tuition. Transportation is the responsibility of the parents or legal guardians.

4. Special education services must be provided to eligible resident students as required by federal and state laws, rules and regulations. Special education services are administered by the director of special education for the division of state schools, education in the unorganized territory within the Department of Education.

5. Career and technical education must be provided to eligible resident students pursuant to Title 20-A, section 3253-A.

The provision of educational services is subject to future modification in response to changes in educational conditions.

Sec. A-7. Assessment of taxes. The State Tax Assessor shall assess the real and personal property taxes in the Town of Atkinson as of April 1, 2019 as provided in the Maine Revised Statutes, Title 36, section 1602.

Sec. A-8. Referendum; certificate to Secretary of State. This Part takes effect 90 days after its approval only for the purpose of permitting its submission by the municipal officers of the Town of Atkinson to the legal voters of the municipality by ballot at the next general election to be held in November. This election must be called, advertised and conducted according to the Maine Revised Statutes, Title 30-A, sections 2528 and 2532. The municipal clerk shall prepare the required ballots on which the clerk shall reduce the subject matter of this Part to the following question:

"Shall the Town of Atkinson be deorganized?"

The voters shall indicate their opinion on this question by a cross or check mark placed against the word "Yes" or "No." Before becoming effective, this Part must be approved by at least 2/3 of the legal voters casting ballots at the general election, and the total number of votes cast for and against the acceptance of this Part at the election must equal or exceed 50% of the total number of votes cast in the municipality for Governor at the last gubernatorial election.

The municipal officers of the Town of Atkinson shall declare the result of the vote. The municipal clerk shall file a certificate of the election result with the Secretary of State within 10 days after the date of the election and mail a copy of the certificate to the fiscal administrator of the unorganized territory.

Sec. A-9. Effective date. Sections 1 to 7 of this Part take effect July 1, 2019 if the legal voters of the Town of Atkinson approve the referendum under section 8 of this Part.

PART B

Sec. B-1. Register and transmit copy of approved deorganization procedure. Before the effective date of the deorganization of the Town of Atkinson pursuant to Part A, the fiscal administrator of the unorganized territory within the Office of the State Auditor shall transmit a copy of the approved deorganization procedure developed in accordance with the Maine Revised Statutes, Title 30-A, section 7205 to the Piscataquis County Manager who shall register the

approved deorganization procedure with the Piscataquis County Registry of Deeds.

Sec. B-2. Effective date. This Part takes effect upon approval of the referendum under Part A, section 8.

Effective pending referendum.

CHAPTER 15

H.P. 1270 - L.D. 1828

An Act To Validate Certain Proceedings Authorizing the Issuance of Bonds and Notes by the City of Bath

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

Whereas, the City of Bath is authorized pursuant to state law and its charter to borrow money and to issue its general obligation bonds and notes in furtherance of its municipal purposes; and

Whereas, at a city referendum held November 7, 2017, the voters of the city voted to adopt a bond ordinance that authorized the city to issue up to \$2,800,000 of its general obligation bonds and notes to finance sidewalks and street and road construction, reconstruction and paving projects, as described in the notices, warrants and ballots for the referendum; and

Whereas, the voters of the city voted in favor of the bond question, 1,834 in favor and 396 against, with 108 blank ballots; and

Whereas, Section 1009 of the city charter requires that the complete text of the bond ordinance be published in a newspaper of general circulation in the city not less than 10 days nor more than 15 days prior to the election; and

Whereas, while the complete text of the bond ordinance was published in a newspaper of general circulation in the city, it was published 4 days prior to the election and not between 10 and 15 days prior to the election; and

Whereas, the failure to publish the text of the bond ordinance as strictly required by the city charter creates a legal technicality that could affect the marketability of the bonds or notes to be issued by the city in connection with the projects; 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 preserva-

tion of the public peace, health and safety; now, therefore,

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

Sec. 1. Validation and authorization. Notwithstanding any provision of the Maine Revised Statutes or the charter of the City of Bath to the contrary, the City of Bath referendum conducted on November 7, 2017 and the proceedings related to that referendum are validated and made effective. The City of Bath is authorized to enter into contracts and to issue bonds or notes of the city in an amount not to exceed \$2,800,000 to finance sidewalks and street and road construction, reconstruction and paving projects, all as set forth in "Bond Ordinance - Question One" of the warrant and ballot for the referendum.

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

Effective April 15, 2018.

**RESOLVES OF THE STATE OF MAINE
AS PASSED AT
THE SECOND REGULAR SESSION OF THE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
2017**

**CHAPTER 30
H.P. 1162 - L.D. 1674**

**Resolve, Regarding Legislative
Review of Portions of Chapter
502: Direct Watersheds of
Lakes Most at Risk from New
Development, Urban Impaired
Streams, a Major Substantive
Rule of the Department of
Environmental Protection**

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 502: Direct Watersheds of Lakes Most at Risk from New Development, Urban Impaired Streams, a provisionally adopted major substantive rule of the Department of Environmental Protection that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

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

Effective February 18, 2018.

**CHAPTER 31
S.P. 626 - L.D. 1727**

**Resolve, To Designate a Bridge
in Surry the Old Surry
Schoolhouse Bridge**

Sec. 1. Bridge in Surry named. Resolved: That the Department of Transportation shall designate Bridge 5977 in the Town of Surry the Old Surry Schoolhouse Bridge.

See title page for effective date.

**CHAPTER 32
H.P. 1148 - L.D. 1664**

**Resolve, Regarding Legislative
Review of Portions of Chapters
126 and 261: Immunization
Requirements for School
Children, Joint Major
Substantive Rules of the
Department of Education and
the Department of Health and
Human Services**

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named joint major substantive rules have been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rules; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapters 126 and 261: Immunization Requirements for School Children, provisionally adopted joint major substantive rules of the Department of Education and the Department of Health and Human Services that have been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

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

Effective March 7, 2018.

CHAPTER 33

H.P. 1245 - L.D. 1800

Resolve, Regarding Legislative Review of Portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder, a Major Substantive Rule of the Department of Health and Human Services

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder, a provisionally

adopted major substantive rule of the Department of Health and Human Services that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

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

Effective March 7, 2018.

CHAPTER 34

S.P. 673 - L.D. 1804

Resolve, Authorizing the Commissioner of Administrative and Financial Services To Sell, Lease or Convey the Interests of the State in Certain Real Property Located in Augusta, Bucksport, Limestone, Brookton Township and Rockwood Strip Township

PART A

Sec. A-1. Authority to convey state property. Resolved: That, notwithstanding any other provision of law, the State, by and through the Commissioner of Administrative and Financial Services, referred to in this Part as "the commissioner," may:

1. Enter into a lease or leases or convey by sale the interests of the State in the state property described in section 2 with the buildings and improvements, together with all appurtenant rights and easements, and all personal property located on that property, including vehicles, machinery, equipment and supplies;

2. Negotiate, draft, execute and deliver any documents necessary to settle any boundary line discrepancies regarding the state property described in section 2;

3. Exercise, pursuant to the Maine Revised Statutes, Title 23, chapter 3, subchapter 3, the power of eminent domain to quiet for all time any possible challenges to ownership of the state property described in section 2;

4. Negotiate, draft, execute and deliver any easements or other rights that, in the commissioner's discretion, may contribute to the value of a proposed sale or lease of the State's interests in the state property described in section 2; and

5. Release any interests in the state property described in section 2 that, in the commissioner's discre-

tion, do not contribute to the value of the remaining state property described in section 2; and be it further

Sec. A-2. Property interests that may be conveyed. Resolved: That the state property authorized to be sold or leased is:

1. A parcel of land at 108 Sewall Street in Augusta consisting of approximately 0.22 acre, conveyed to the City of Augusta, identified on Tax Assessor's Map 26 as Lot 118 and recorded in the Kennebec County Registry of Deeds, Book 11176, Page 203;

2. A parcel of land in Augusta at 187-189 State Street known as Smith-Merrill House consisting of approximately 0.81 acre, conveyed to the City of Augusta, identified on Tax Assessor's Map 33 as Lot 59 and recorded in the Kennebec County Registry of Deeds, Book 2632, Page 232;

3. A parcel of land and associated buildings in Augusta known as 221 State Street, a former Department of Health and Human Services state building, consisting of approximately 2.78 acres, conveyed to the City of Augusta, identified on Tax Assessor's Map 32 as Lots 25, 26 and 27 and recorded in the Kennebec County Registry of Deeds, Book 1342, Page 206 and Book 1332, Page 310;

4. A parcel of land and an associated building in Augusta known as 242 State Street, consisting of approximately 1.51 acres, identified on Tax Assessor's Map 32 as Lot 20 and recorded in the Kennebec County Registry of Deeds, Book 1070, Page 499;

5. A parcel of land in Limestone at 6 Church Street known as Old Limestone Manor consisting of approximately 0.45 acre, conveyed to the Town of Limestone, identified on Tax Assessor's Map 04 as Lot 32 and recorded in the Southern Aroostook County Registry of Deeds, Book 5315, Page 345; and

6. A parcel of land at 418 Millvale Road in Bucksport formerly owned by Joan Virginia Hasey, who bequeathed the property to the State, consisting of approximately 1.82 acres, conveyed to the Town of Bucksport, identified on Tax Assessor's Map 09 as Lot 29 and recorded in the Hancock County Registry of Deeds, Book 1181, Page 352; and be it further

Sec. A-3. Property to be sold as is. Resolved: That the commissioner may negotiate and execute leases and purchase and sale agreements upon terms the commissioner considers appropriate; however, the state property described in section 2 must be sold "as is," with no representations or warranties.

Title must be transferred by quitclaim deed without covenant or release deed and executed by the commissioner; and be it further

Sec. A-4. Exemptions. Resolved: That any lease or conveyance pursuant to this Part is exempt from any statutory or regulatory requirement that the

state property described in section 2 first be offered to the Maine State Housing Authority or another state or local agency; and be it further

Sec. A-5. Appraisal. Resolved: That the commissioner shall have the current market value of the state property described in section 2 determined by broker opinion of value and current comparative market analysis. The commissioner may list the state property for sale or lease with private real estate brokers and negotiate any sales or leases, solicit bids, sell directly to purchasers or enter directly into leases with tenants. The commissioner may reject any offers; and be it further

Sec. A-6. Proceeds. Resolved: That:

1. Any proceeds from the sale or lease of the state property described in section 2 as 108 Sewall Street, Augusta pursuant to this Part must, as designated by the commissioner, be deposited into the Department of Administrative and Financial Services, Bureau of General Services capital repair and improvement account for capital improvements;

2. Any proceeds from the sale or lease of the state property described in section 2 as 187-189 State Street, Augusta pursuant to this Part must, as designated by the commissioner, be deposited into the Department of Administrative and Financial Services, Bureau of General Services capital repair and improvement account for capital improvements;

3. Any proceeds from the sale or lease of the state property described in section 2 as 221 State Street, Augusta pursuant to this Part must, as designated by the commissioner, be deposited into the Department of Administrative and Financial Services, Bureau of General Services capital repair and improvement account for capital improvements;

4. Any proceeds from the sale or lease of the state property described in section 2 as 242 State Street, Augusta pursuant to this Part must, as designated by the commissioner, be deposited into the Department of Administrative and Financial Services, Bureau of General Services capital repair and improvement account for capital improvements;

5. Any proceeds from the sale or lease of the state property described in section 2 as 6 Church Street, Limestone pursuant to this Part must, as designated by the commissioner, be used to reimburse the department's administrative expenses and be deposited into the Department of Administrative and Financial Services, Bureau of General Services capital repair and improvement account for capital improvements, and remaining proceeds must be provided to the Maine School of Science and Mathematics; and

6. Any proceeds from the sale or lease of the state property described in section 2 as 418 Millvale Road, Bucksport pursuant to this Part must, as designated by

the commissioner, be deposited into the Department of Administrative and Financial Services, Bureau of General Services capital repair and improvement account for capital improvements; and be it further

Sec. A-7. Repeal. Resolved: That this Part is repealed 5 years from its effective date.

PART B

Sec. B-1. Authority to convey state property. Resolved: That, notwithstanding any other provision of law, the State, by and through the Commissioner of Administrative and Financial Services, referred to in this Part as "the commissioner," may:

1. Enter into a lease or leases or convey by sale the interests of the State in the state property described in section 2 with the buildings and improvements, together with all appurtenant rights and easements, and all personal property located on that property, including vehicles, machinery, equipment and supplies;

2. Negotiate, draft, execute and deliver any documents necessary to settle any boundary line discrepancies regarding the state property described in section 2;

3. Exercise, pursuant to the Maine Revised Statutes, Title 23, chapter 3, subchapter 3, the power of eminent domain to quiet for all time any possible challenges to ownership of the state property described in section 2;

4. Negotiate, draft, execute and deliver any easements or other rights that, in the commissioner's discretion, may contribute to the value of a proposed sale or lease of the State's interests in the state property described in section 2; and

5. Release any interests in the state property described in section 2 that, in the commissioner's discretion, do not contribute to the value of the remaining state property described in section 2; and be it further

Sec. B-2. Property interests that may be conveyed. Resolved: That the state property authorized to be sold or leased or with respect to which an easement is to be delivered is:

1. A parcel of land in Brookton Township formerly occupied by the Brookton Elementary School consisting of approximately 4.5 acres, conveyed to the Town of Brookton, identified by Maine Revenue Services, Map WA028, Plan 2, as Lot 1 and recorded in the Washington County Registry of Deeds, Book 555, Page 324; and

2. A parcel of land in Rockwood Strip, T1 R1 NBKP, formerly occupied by the Rockwood Elementary School consisting of approximately 0.36 acre, to be conveyed to the State from Somerset County, and an additional parcel of land in Rockwood Strip, T1 R1 NBKP, of approximately 6.35 acres conveyed to the

State, for a total of 6.71 acres, identified and recorded in the Somerset County Registry of Deeds, Book 1516, Page 154; and be it further

Sec. B-3. Property to be sold as is. Resolved: That the commissioner may negotiate and execute leases and purchase and sale agreements upon terms the commissioner considers appropriate; however, the state property described in section 2 must be sold "as is," with no representations or warranties.

Title must be transferred by quitclaim deed without covenant or release deed and executed by the commissioner; and be it further

Sec. B-4. Exemptions. Resolved: That any lease or conveyance pursuant to this Part is exempt from any statutory or regulatory requirement that the state property described in section 2 first be offered to the Maine State Housing Authority or another state or local agency; and be it further

Sec. B-5. Appraisal. Resolved: That the commissioner shall have the current market value of the state property described in section 2 determined by broker opinion of value and current comparative market analysis. The commissioner may list the state property for sale or lease with private real estate brokers and negotiate any sales or leases, solicit bids, sell directly to purchasers or enter directly into leases with tenants. The commissioner may reject any offers; and be it further

Sec. B-6. Proceeds. Resolved: That:

1. Any proceeds from the sale or lease of the state property described in section 2 as being in Brookton Township pursuant to this Part must, as designated by the commissioner, be deposited into the Unorganized Territory Education and Services Fund; and

2. Any proceeds from the sale or lease of the state property described in section 2 as being in Rockwood Strip pursuant to this Part must, as designated by the commissioner, be used to reimburse the department's administrative expenses and be deposited into the Department of Administrative and Financial Services, Bureau of General Services capital repair and improvement account for capital improvements, and remaining proceeds must be equally divided and deposited into the Unorganized Territory Education and Services Fund and provided to Somerset County; and be it further

Sec. B-7. Repeal. Resolved: That this Part is repealed 5 years from its effective date.

See title page for effective date.

**CHAPTER 35
H.P. 1246 - L.D. 1801**

Resolve, Regarding Legislative Review of Portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 21, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder, a Major Substantive Rule of the Department of Health and Human Services

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 21, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder, a provisionally adopted major substantive rule of the Department of Health and Human Services that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if in Section 2000 of the rule, relating to audit of services provided, the documentation requirement for staffing schedules per member is removed and replaced with a requirement that the documentation show the hours and the name of the direct care staff scheduled to work at the facility.

Emergency clause. In view of the emergency

cited in the preamble, this legislation takes effect when approved.

Effective March 26, 2018.

**CHAPTER 36
H.P. 1145 - L.D. 1660**

Resolve, Authorizing the State Tax Assessor To Convey the Interest of the State in Certain Real Estate in the Unorganized Territory

Sec. 1. State Tax Assessor authorized to convey real estate. Resolved: That the State Tax Assessor is authorized to convey by sale the interest of the State in real estate in the Unorganized Territory as indicated in this resolve. Except as otherwise directed in this resolve, the sale must be made to the highest bidder subject to the following provisions.

1. Notice of the sale must be published 3 times prior to the sale, once each week for 3 consecutive weeks, in a newspaper in the county where the real estate lies, except in those cases in which the sale is to be made to a specific individual or individuals as authorized in this resolve, in which case notice need not be published.

2. A parcel may not be sold for less than the amount authorized in this resolve. If identical high bids are received, the bid postmarked with the earliest date is considered the highest bid.

If bids in the minimum amount recommended in this resolve are not received after the notice, the State Tax Assessor may sell the property for not less than the minimum amount without again asking for bids if the property is sold on or before April 1, 2019.

Employees of the Department of Administrative and Financial Services, Bureau of Revenue Services and spouses, siblings, parents and children of employees of the Bureau of Revenue Services are barred from acquiring from the State any of the real property subject to this resolve.

Upon receipt of payment as specified in this resolve, the State Tax Assessor shall record the deed in the appropriate registry at no additional charge to the purchaser before sending the deed to the purchaser.

Abbreviations and plan and lot references are identified in the 2015 Unorganized Territory valuation book. Parcel descriptions are as follows:

2015 MATURED TAX LIENS

T17 R4 WELS, Aroostook County

Map AR021, Plan 6, Lot 113 038980448-1
 Carrier, Leo James and Patricia A. 0.14 acre

Recommendation: Sell to Coleman, John Wayne for \$658.02. If he does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$675.00.

TAX LIABILITY

2015	\$122.38
2016	131.29
2017	130.05
2018 (estimated)	130.05

Estimated Total Taxes \$513.77

Interest	17.45
Costs	38.00
Deed	19.00

Total \$588.22

Recommendation: Sell to Carrier, Leo James and Patricia A. for \$588.22. If they do not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$600.00.

Connor TWP, Aroostook County

Map AR105, Plan 5, Lot 42.1 038020407-4
 Coleman, John Wayne 41.60 acres

TAX LIABILITY

2015	\$124.19
2016	153.77
2017	152.32
2018 (estimated)	152.32

Estimated Total Taxes \$582.60

Interest	18.42
Costs	38.00
Deed	19.00

Total \$658.02

Bancroft TWP, Aroostook County

Map AR110, Plan 2, Lot 6.4 030400029-1
 Brooks, Ricky 7.45 acres

TAX LIABILITY

2013	\$195.20
2014	197.86
2015	59.32
2016	58.86
2017	58.30
2018 (estimated)	58.30

Estimated Total Taxes \$627.84

Interest	83.86
Costs	76.00
Deed	19.00

Total \$806.70

Recommendation: Sell to Brooks, Ricky for \$806.70. If he does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$825.00.

Bancroft TWP, Aroostook County

Map AR110, Plan 3, Lot 14 030400014-2
 Battle Brook Farm Church 241.00 acres with building

TAX LIABILITY

2014	\$1,109.52
2015	715.08
2016	736.85
2017	739.56
2018 (estimated)	739.56

RESOLVE, C. 36

SECOND REGULAR SESSION - 2017

Recommendation: Sell to Bufford, Bowling G. and Linda P. for \$325.72. If they do not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$350.00.

Deed	19.00
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Total	\$1,206.13

Recommendation: Sell to Huntley, Lance for \$1,206.13. If he does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$1,225.00.

Fletchers Landing TWP, Hancock County

Map HA004, Plan 2, Lot 42 098040206-1

Wilson, Tara 0.20 acre

T2 R6 WELS, Penobscot County

TAX LIABILITY	
2015	\$12.40
2016	11.70
2017	11.70
2018 (estimated)	11.70
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Estimated Total Taxes	\$47.50
Interest	1.71
Costs	38.00
Deed	19.00
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Total	\$106.21

Map PE008, Plan 1, Lot 36 198030030-2

Coastal Maine LLC 0.23 acre

TAX LIABILITY	
2015	\$20.88
2016	18.65
2017	19.39
2018 (estimated)	19.39
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Estimated Total Taxes	\$78.31
Interest	2.84
Costs	51.00
Deed	19.00
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Total	\$151.15

Recommendation: Sell to Wilson, Tara for \$106.21. If she does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$125.00.

Recommendation: Sell to Coastal Maine LLC for \$151.15. If Coastal Maine LLC does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$175.00.

T2 R6 WELS, Penobscot County

Map PE008, Plan 1, Lot 30.3 198030067-2

Huntley, Lance 10.31 acres

Argyle TWP, Penobscot County

TAX LIABILITY	
2015	\$148.26
2016	313.52
2017	326.03
2018 (estimated)	326.03
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Estimated Total Taxes	\$1,113.84
Interest	35.29
Costs	38.00

Map PE035, Plan 1, Lot 30 198012045-1

Boswell, Robin 8.22 acres

TAX LIABILITY	
2015	\$91.35
2016	84.07
2017	87.43
2018 (estimated)	87.43

Estimated Total	\$350.28
Taxes	
Interest	12.53
Costs	38.00
Deed	19.00
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Total	\$419.81

Recommendation: Sell to Boswell, Robin for \$419.81. If Boswell, Robin does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$425.00.

Argyle TWP, Penobscot County

Map PE035, Plan 4, Lot 38 198010230-1

Lusth-Winn, Marie 2.76 acres with building

TAX LIABILITY

2015	\$26.28
2016	77.86
2017	80.96
2018 (estimated)	80.96
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Estimated Total	\$266.06
Taxes	
Interest	10.49
Costs	38.00
Deed	19.00
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Total	\$333.55

Recommendation: Sell to Lusth-Winn, Marie for \$333.55. If she does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$350.00.

Kingman TWP, Penobscot County

Map PE036, Plan 3, Lots 214 and 216 198080138-1

Worster, Freeman 12.30 acres

TAX LIABILITY

2015	\$143.03
2016	133.41
2017	138.73
2018 (estimated)	138.73
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Estimated Total	\$553.90
Taxes	
Interest	19.69
Costs	38.00
Deed	19.00
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Total	\$630.59

Recommendation: Sell to Worster, Freeman for \$630.59. If he does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$650.00.

Grand Falls TWP, Penobscot County

Map PE037, Plan 3, Lot 20 192500003-2

Worster, Jennifer 55.00 acres with building

TAX LIABILITY

2015	\$291.36
2016	393.01
2017	408.69
2018 (estimated)	408.69
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Estimated Total	\$1,501.75
Taxes	
Interest	44.35
Costs	38.00
Deed	19.00
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Total	\$1,603.10

Recommendation: Sell to Worster, Jennifer for \$1,603.10. If she does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$1,625.00.

RESOLVE, C. 36

SECOND REGULAR SESSION - 2017

Greenfield TWP, Penobscot County

Map PE039, Plan 1, Lot 21.1 192700457-4

Conary, Jerry A. 1.72 acres with building

Recommendation: Sell to Bowley, Norman W., Jr. for \$231.62. If he does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$250.00.

TAX LIABILITY

2015	\$301.89
2016	286.32
2017	297.75
2018 (estimated)	297.75

Estimated Total Taxes	\$1,183.71
Interest	41.72
Costs	38.00
Deed	19.00
Total	\$1,282.43

Recommendation: Sell to Conary, Jerry A. for \$1,282.43. If he does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$1,300.00.

Orneville TWP, Piscataquis County

Map PI082, Plan 1, Lot 39 218210036-1

Bowley, Norman W., Jr. 1.00 acre

TAX LIABILITY

2015	\$44.89
2016	40.27
2017	41.67
2018 (estimated)	41.67

Estimated Total Taxes	\$168.50
Interest	6.12
Costs	38.00
Deed	19.00
Total	\$231.62

Orneville TWP, Piscataquis County

Map PI082, Plan 2, Lot 6.3 218210247-4

Citimortgage Inc. 10.23 acres

TAX LIABILITY

2015	\$124.82
2016	115.09
2017	119.11
2018 (estimated)	119.11

Estimated Total Taxes	\$478.13
Interest	17.14
Costs	38.00
Deed	19.00
Total	\$552.27

Recommendation: Sell to Citimortgage Inc. for \$552.27. If Citimortgage Inc. does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$575.00.

T19 MD, Washington County

Map WA006, Plan 1, Lot 2.11 298210061-2

Worster, Jennifer M. 35.00 acres with building

TAX LIABILITY

2015	\$1,401.32
2016	1,403.71
2017	1,455.88
2018 (estimated)	1,455.88

Estimated Total Taxes	\$5,716.79
Interest	196.27

Costs	38.00
Deed	19.00
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Total	\$5,970.06

Recommendation: Sell to Worster, Jennifer M. for \$5,970.06. If she does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$5,975.00.

T10 R3 NBPP, Washington County

Map WA024, Plan 2, Lot 1	298050016-1
Craig, Sherwood	15.25 acres

TAX LIABILITY

2015	\$309.55
2016	607.73
2017	629.75
2018 (estimated)	629.75
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Estimated Total Taxes	\$2,176.78
Interest	53.77
Costs	38.00
Deed	19.00
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Total	\$2,287.55
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Recommendation: Sell to Craig, Sherwood for \$2,287.55. If he does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$2,300.00.

Brookton TWP, Washington County

Map WA028, Plan 2, Lot 16	298010090-1
McGibney, Belle Heirs	0.37 acre

TAX LIABILITY

2015	\$23.35
2016	25.51

2017	26.43
2018 (estimated)	26.43

Estimated Total Taxes	\$101.72
Interest	3.37
Costs	38.00
Deed	19.00
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Total	\$162.06

Recommendation: Sell to McGibney, Belle Heirs for \$162.06. If they do not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$175.00.

Edmunds TWP, Washington County

Map WA029, Plan 1, Lot 76	298040011-3
Kazimierczak, George and Marie	17.17 acres with building

TAX LIABILITY

2015	\$214.46
2016	259.50
2017	268.90
2018 (estimated)	268.90
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Estimated Total Taxes	\$1,011.76
Interest	31.60
Costs	38.00
Deed	19.00
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Total	\$1,100.36
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Recommendation: Sell to Kazimierczak, George and Marie for \$1,100.36. If they do not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$1,125.00.

Trescott TWP, Washington County

Map WA032, Plan 2, Lot 72.3 298110271-1
 Moores, Philip L. 2.07 acres

Recommendation: Sell to Hudson, Susan Ann for \$157.73. If she does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$175.00.

TAX LIABILITY

2015	\$45.43
2016	62.77
2017	65.04
2018 (estimated)	65.04
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Estimated Total Taxes	\$238.28
Interest	6.97
Costs	38.00
Deed	19.00
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Total	\$302.25

Recommendation: Sell to Moores, Philip L. for \$302.25. If he does not pay this amount within 60 days after the effective date of this resolve, sell to the highest bidder for not less than \$325.00.

Trescott TWP, Washington County

Map WA032, Plan 5, Lot 14 298110160-1
 Hudson, Susan Ann 0.54 acre

TAX LIABILITY

2015	\$18.78
2016	25.74
2017	26.67
2018 (estimated)	26.67
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Estimated Total Taxes	\$97.86
Interest	2.87
Costs	38.00
Deed	19.00
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Total	\$157.73

See title page for effective date.

CHAPTER 37

H.P. 1247 - L.D. 1802

Resolve, Regarding Legislative Review of Portions of Chapter 3: Maine Clean Election Act and Related Provisions, a Major Substantive Rule of the Commission on Governmental Ethics and Election Practices

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 3: Maine Clean Election Act and Related Provisions, a provisionally adopted major substantive rule of the Commission on Governmental Ethics and Election Practices that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

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

Effective April 1, 2018.

**CHAPTER 38
H.P. 1174 - L.D. 1694**

**Resolve, Directing the
Department of Education To
Adopt Protocols Designed To
Prevent Youth Suicide**

Sec. 1. Rulemaking; required suicide prevention protocols. Resolved: That the Commissioner of Education shall amend the Department of Education's rule Chapter 38: Suicide Awareness and Prevention in Maine Public Schools to require that school administrative units have protocols for suicide prevention and intervention and counseling services after an incident of youth suicide in place that are reviewed and approved by the Department of Education based on the best practices established by the National Alliance on Mental Illness Maine or a similar organization authorized by the Department of Health and Human Services through its suicide prevention program; and be it further

Sec. 2. Submission of rules. Resolved: That the rules to be amended by the Commissioner of Education in accordance with this resolve are major substantive rules pursuant to the Maine Revised Statutes, Title 20-A, section 4502, subsection 5-B. In order to implement the protocols as part of the State's suicide awareness education and training programs beginning with the 2019-2020 school year, the Department of Education shall provisionally adopt amended rules on or before December 31, 2018. The department shall submit the provisionally adopted rules to the Executive Director of the Legislative Council by the deadline established for the legislative rule acceptance period in 2019 in accordance with Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

**CHAPTER 39
H.P. 1242 - L.D. 1797**

**Resolve, Regarding Legislative
Review of Portions of Chapter
418: Maine Solid Waste
Management Rules: Beneficial
Use of Solid Wastes, a Major
Substantive Rule of the
Department of Environmental
Protection**

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 418: Maine Solid Waste Management Rules: Beneficial Use of Solid Wastes, a provisionally adopted major substantive rule of the Department of Environmental Protection that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made:

1. The rule must be amended in Section 3(S), Section 5, Section 6(B), Appendix C and in any other affected sections of the rule relating to the beneficial use of emulsified asphalt encapsulated contaminated soil to allow the beneficial use of emulsified asphalt encapsulated contaminated soil that is produced from soil contaminated with contaminants other than oil only upon the issuance of a beneficial use license pursuant to Section 9 of the rule;

2. The rule must be amended to authorize the department to require a beneficial use licensee authorized pursuant to the rule to use secondary material as construction fill to implement an environmental monitoring plan, subject to review and approval by the department; and

3. All other necessary changes must be made to the rule to ensure conformity throughout the rule with the changes directed in this section.

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

Effective April 4, 2018.

CHAPTER 40
H.P. 1260 - L.D. 1818

**Resolve, To Designate a Bridge
in Gorham the Corporal
Joshua P. Barron Memorial
Bridge**

Sec. 1. Bridge in Gorham named. Resolved: That the Department of Transportation shall designate Bridge 6443 in the Town of Gorham, currently known as the Flaggy Meadow Road Bridge, the Corporal Joshua P. Barron Memorial Bridge.

See title page for effective date.

CHAPTER 41
H.P. 1224 - L.D. 1778

**Resolve, Regarding Medicaid
Reimbursement for
Rehabilitation Hospitals**

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

Whereas, recent changes to the formula used by the Department of Health and Human Services for determining Medicaid reimbursement rates for providers of rehabilitation services have placed an undue and inequitable financial burden on the providers of these services; and

Whereas, it is imperative that this inequity be corrected as soon as possible; 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

Sec. 1. Medicaid reimbursement rates. Resolved: That the Department of Health and Human Services shall amend the department's rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 45.06 to increase the Medicaid reimbursement rate provided to rehabilitation hospitals to \$15,161.43 per discharge, retroactive to July 1, 2017. This increase in the Medicaid reimbursement rate must be funded by reducing the hospital supplemental pool as described in rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 45.07 by \$400,000 and have no net cost to the General Fund, Other Special Revenue Funds or the Federal Expenditures Fund.

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

Effective April 5, 2018.

CHAPTER 42
S.P. 659 - L.D. 1772

**Resolve, Directing the Attorney
General To Update the
Portions of the Consumer Law
Guide Pertaining to Implied
Warranties**

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

Whereas, this resolve directs the Attorney General to update the portions of the Attorney General's Consumer Law Guide pertaining to implied warranties on consumer goods by July 1, 2018; and

Whereas, enactment of this resolve before the 90-day period expires is necessary to provide the Attorney General sufficient time to complete the update by July 1, 2018; 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

Sec. 1. Attorney General to update Consumer Law Guide. Resolved: That, by July 1, 2018, the Attorney General shall review and update the portions of the Attorney General's Consumer Law Guide pertaining to implied warranties on consumer goods other than motor vehicles. In conducting this review, the Attorney General shall consult with individuals representing the interests of manufacturers and retailers of consumer goods, including household appliances, as well as consumer advocates. Based on that review, the Attorney General shall update the Consumer Law Guide to, at a minimum, clarify the scope of a consumer's responsibility to follow the operation and maintenance guidelines contained in the manufacturer's user manual for a consumer good other than a motor vehicle and the effect of a consumer's failure to follow those operation and maintenance guidelines on the availability of relief under the implied warranty provisions of the laws of this State.

Emergency clause. In view of the emergency

cited in the preamble, this legislation takes effect when approved.

Effective April 5, 2018.

CHAPTER 43

H.P. 1221 - L.D. 1767

Resolve, Regarding Legislative Review of Portions of Chapter 11.14: Atlantic Sea Scallop Limited Entry Program, a Major Substantive Rule of the Department of Marine Resources

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 11.14: Atlantic Sea Scallop Limited Entry Program, a provisionally adopted major substantive rule of the Department of Marine Resources that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following change is made:

1. The rule is amended in section 14, subsection 1, paragraph D to remove subparagraphs (2) and (3) and instead to provide a method for increasing the number of draws an applicant receives based on the applicant's unsuccessful attempts in the lottery in consecutive years immediately preceding the lottery in which the applicant has submitted a lottery application.

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

Effective April 8, 2018.

CHAPTER 44

H.P. 1243 - L.D. 1798

Resolve, Regarding Legislative Review of Portions of Chapter 101: ConnectME Authority, a Major Substantive Rule of the ConnectME Authority

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 101: ConnectME Authority, a provisionally adopted major substantive rule of the ConnectME Authority that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made:

1. The rule must be amended in section 2, subsection A in the definition of "advanced communications technology infrastructure" to clarify that an infrastructure improvement project is a project that expands the deployment or improves the quality of either broadband service or wireless service, or both;

2. The rule must be amended in section 2, subsection D in the definition of "broadband service provider" to mean a facilities-based provider of broadband connections to end users that is required to file FCC Form 477 with the Federal Communications Commission;

3. The rule must be amended in section 3, subsection A to change "communications service providers" to "broadband service providers";

4. The rule must be amended in section 3, subsection C to provide that the ConnectME Authority may request and communications service providers may voluntarily provide additional information to determine availability of broadband service in specific geographic locations to assist in evaluating or developing infrastructure grant proposals and that any information collected may be designated as confidential by the authority in accordance with the Maine Revised Statutes, Title 35-A, section 9207 and Chapter 101 and may be used for only the purposes for which it is collected;

5. The rule must be amended in section 4, subsection C, paragraph 4 to add a provision to clarify that no release of records may take place before 7 days following issuance of a denial of stay request either by the ConnectME Authority or by a court of competent jurisdiction, whichever is later; and

6. The rule must be amended in section 6, subsection D, paragraph 5, subparagraph (a), divisions (i) and (ii) and paragraph 6 to specify that the completion of a project and submission of a report demonstrating project completion must occur within one year of receiving funding or within 180 days of receiving all necessary permits, licenses or government approvals, whichever is later.

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

Effective April 8, 2018.

CHAPTER 45

H.P. 1248 - L.D. 1803

Resolve, Regarding Legislative Review of Chapter 28: Advanced Deposit Wagering, a Major Substantive Rule of the Gambling Control Board

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of Chapter 28: Advanced Deposit Wagering, a provisionally adopted major substantive rule of the Gambling Control Board that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

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

Effective April 10, 2018.

CHAPTER 46

H.P. 1204 - L.D. 1724

Resolve, To Establish the Commission on Autonomous Vehicles and To Allow the Testing, Demonstration and Deployment of Automated Driving Systems

Sec. 1. Commission established. Resolved: That the Commission on Autonomous Vehicles, referred to in this resolve as "the commission," is established to coordinate efforts among state agencies and knowledgeable stakeholders to inform the development of a process to allow an autonomous vehicle tester to demonstrate and deploy for testing purposes an automated driving system on a public way.

1. Membership. The commission consists of, at a minimum, 11 members as follows:

- A. The Commissioner of Transportation or the commissioner's designee, who serves as chair;
- B. The Secretary of State or the secretary's designee from the Department of the Secretary of State, Bureau of Motor Vehicles;
- C. The Commissioner of Public Safety or the commissioner's designee from the Department of Public Safety, Bureau of State Police;
- D. The Chief Information Officer or the officer's designee from the Department of Administrative and Financial Services, Office of Information Technology;

E. A representative of the Department of Public Safety, Bureau of Highway Safety, appointed by the Commissioner of Public Safety;

F. A representative of the Department of Professional and Financial Regulation, Bureau of Insurance, appointed by the Commissioner of Professional and Financial Regulation;

G. A representative of the office of aging and disability services within the Department of Health and Human Services, appointed by the Commissioner of Health and Human Services;

H. The Executive Director of the Maine Turnpike Authority or the executive director's designee;

I. One member who has expertise in autonomous vehicle technologies, appointed by the Commissioner of Transportation;

J. One member representing a nonprofit transit provider, appointed by the Commissioner of Transportation; and

K. One member representing the motor carrier industry, appointed by the Commissioner of Transportation.

The chair may make other appointments to the commission as necessary.

2. Definitions. For the purposes of this resolve, the following terms have the following meanings.

A. "Automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis regardless of whether it is limited to a specific operational design domain. "Automated driving system" is used specifically to describe a level 3, 4 or 5 driving automation system in accordance with standards and specifications outlined in standard J3016 adopted by the Society of Automotive Engineers in September 2016.

B. "Autonomous vehicle" means any vehicle or motor vehicle equipped with a driving automation system.

C. "Autonomous vehicle manufacturer" means a person or entity that builds or sells autonomous vehicles or that develops or installs automated driving systems in motor vehicles that are not originally built as autonomous vehicles.

D. "Autonomous vehicle tester" means an autonomous vehicle manufacturer, institution of higher education, fleet service provider or automotive equipment or technology provider that tests autonomous vehicles.

E. "Driving automation system" means a system in a motor vehicle that performs all or part of the dynamic driving task on a sustained basis.

F. "Dynamic driving task" means all of the real time operational and tactical functions required to operate a vehicle in on-road traffic.

G. "Operational design domain" means the specific conditions under which a given driving automation system or feature is designed to function, including but not limited to driving modes.

3. Duties. The commission shall:

A. Develop a recommendation for a process to evaluate and authorize an autonomous vehicle tester to demonstrate and deploy for testing purposes an automated driving system on a public way;

B. Review existing state laws and, if necessary, recommend legislation for the purposes of governing autonomous vehicle testers and the testing, demonstration, deployment and operation of automated driving systems on public ways;

C. Monitor state compliance with federal regulations as they relate to autonomous vehicles;

D. Consult with public sector and private sector experts on autonomous vehicle technologies, as appropriate; and

E. Invite the participation of knowledgeable stakeholders to provide written and oral comments on the commission's assigned duties. Knowledgeable stakeholders may include representatives from the Maine Municipal Association, the Maine Automobile Dealers Association, the American Council of Engineering Companies of Maine, the Maine Better Transportation Association and the Maine Motor Transport Association and a person representing labor interests.

4. Report. By January 15, 2020, the Commissioner of Transportation shall submit an initial written report on the progress of the commission and by January 15, 2022, the Commissioner of Transportation shall submit a final written report that includes findings and recommendations, including suggested legislation, for presentation to the joint standing committee of the Legislature having jurisdiction over transportation matters. The joint standing committee of the Legislature having jurisdiction over transportation matters may submit a bill to the Second Regular Session of the 129th Legislature relating to the subject matter of the initial report and to the Second Regular Session of the 130th Legislature relating to the subject matter of the final report; and be it further

Sec. 2. Rulemaking. Resolved: That, notwithstanding the Maine Revised Statutes, Title 29-A, section 470, the Commissioner of Transportation, in consultation with the commission, shall establish a process to evaluate and authorize an autonomous vehicle tester to demonstrate and deploy for testing purposes an automated driving system on a public way.

1. Rules. The Commissioner of Transportation shall adopt rules, in consultation with the Department of Public Safety and the Department of the Secretary of State, to establish a process to evaluate and authorize an autonomous vehicle tester to demonstrate and deploy for testing purposes an automated driving system on a public way. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Enforcement. The Commissioner of Transportation may immediately prohibit an operator or autonomous vehicle tester from testing an automated driving system if the Commissioner of Transportation, in consultation with the Commissioner of Public Safety and the Secretary of State, determines that testing poses a risk to public safety or that the operator or autonomous vehicle tester fails to comply with the requirements as established by rule adopted pursuant to subsection 1.

See title page for effective date.

**CHAPTER 47
S.P. 125 - L.D. 384**

**Resolve, To Clarify
Reimbursement for Parent-
only Programs under the
MaineCare Program**

Sec. 1. Department of Health and Human Services to reimburse for parent-only programs when allowable. Resolved: That the Department of Health and Human Services shall amend its rules in Chapter 101: MaineCare Benefits Manual, Chapters II and III, Sections 28, 65 and 90 to reimburse for services provided to a parent or guardian of a child who qualifies for the MaineCare program but who is not present when the service is being provided, as long as the service relates to the child's plan of care and is permitted by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. These services may be provided to parents or guardians individually or in groups as long as the service is allowable under federal law. Rules adopted pursuant to this section are routine technical rules pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

**CHAPTER 48
H.P. 1146 - L.D. 1661**

**Resolve, Regarding Legislative
Review of Portions of Chapter
33: Rule Relating to the
Licensing of Family Child Care
Providers, a Major Substantive
Rule of the Department of
Health and Human Services,
Maine Center for Disease
Control and Prevention**

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 33: Rule Relating to the Licensing of Family Child Care Providers, a provisionally adopted major substantive rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if:

1. The requirement that providers must share information with parents regarding policies of parental visitation at the child care site in Section 5.C.11.b is removed from that section and a requirement that providers must allow parents to be able to visit and observe any time during the hours of operation is added to the rule;

2. In Section 8.A of the rule, the language stating that provider-child ratios are not based on the developmental stages in the definition section is removed;

3. In Section 8.A.1 of the rule, the ratios for mixed ages for one provider include the ratio of 8

children aged 2 to 5 years and 2 children aged more than 5 years;

4. In Section 8.A.3.a of the rule, the age of the children of the licensee that are counted in the provider-child ratio and included in the licensed capacity is changed from under the age of 3 to under the age of 4;

5. In Section 14.E.2.b of the rule, the language requiring climbers, swings and slides to be 6 feet from any hard surfaces is removed and replaced with a requirement that the climbers, swings and slides be located at a sufficient distance to prevent injury;

6. In Section 14.E.3 of the rule, the requirement for equipment that exceeds 36 inches in height is amended to specify that the equipment exceeds 36 inches at the climbable or standing surface;

7. In Section 14.E.3 of the rule, the requirement that the rubber tiles and mats used must be approved by the American Society for Testing and Materials is removed;

8. In Section 14.E.3.b of the rule, language is added to include swings with climbers and slides;

9. In Section 14.E.3.b of the rule, the requirement for a minimum amount of 6 inches or more of energy-absorbing materials is removed and replaced with a requirement for a sufficient amount of energy-absorbing materials to prevent injury;

10. In Section 14.E.3.c of the rule, the requirement for energy-absorbing materials to extend at least 6 feet from the equipment to protect children is removed and replaced with a requirement that energy-absorbing materials extend beyond the equipment in all directions to prevent injury in the event of a fall;

11. In Section 17.A of the rule, language is added to require that a person assigned by a provider to drive children enrolled in care must complete training for transportation of children every 2 years.

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

Effective April 15, 2018.

CHAPTER 49
H.P. 1244 - L.D. 1799

Resolve, Regarding Legislative Review of Portions of Chapter 308: Standards of Conduct for Transmission and Distribution Utilities and Affiliated Generators, a Major Substantive Rule of the Public Utilities Commission

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 308: Standards of Conduct for Transmission and Distribution Utilities and Affiliated Generators, a provisionally adopted major substantive rule of the Public Utilities Commission that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the rule is amended to:

1. Add a provision that specifies that a complaint may be brought for matters within the Public Utilities Commission's jurisdiction by an individual generator for acts or omissions of a transmission and distribution utility that are unreasonable, preferential, discriminatory or anticompetitive and the complaint must be treated in the same manner as a complaint otherwise brought by 10 persons as allowed by Title 35-A, section 1302;

2. Clarify in section 1 of the rule that the rule applies to an affiliated generator that:

A. Owns or develops generation or generation-related assets in the ISO-New England, or ISO-

NE, or Northern Maine Independent System Administrator, or NMISA, power system;

B. Imports generation into the ISO-NE or NMISA power system;

C. Is directly interconnected to the ISO-NE or NMISA power system;

D. Takes any action or makes any plans toward future ownership or development of generation or generation-related assets in the ISO-NE or NMISA power system; or

E. Takes any action or makes any plans to import generation or become directly interconnected to the ISO-NE or NMISA power system;

3. Add in section 2 of the rule a definition of "directly interconnected" to clarify that the term refers to the physical electrical connection of a generator to a transmission and distribution utility's transmission and distribution assets that allows that generator to transport electric power across the transmission and distribution utility's electric plant;

4. Add in section 2 of the rule a definition of "service territory" to clarify that it refers to the geographic area in which a transmission and distribution utility is authorized to provide service based on a finding of need by the Public Utilities Commission or a legislative finding of need;

5. Clarify in section 3, paragraph A of the rule that a transmission and distribution utility may not have an affiliate that owns generation or generation-related assets that are directly interconnected to any facilities owned or operated by the transmission and distribution utility or if the point of interconnection of generation or generation-related assets of the affiliate is within the service territory of the transmission and distribution utility;

6. Add in section 4 of the rule a general standard that explicitly prohibits preferential, discriminatory or other anticompetitive conduct by a transmission and distribution utility;

7. Clarify in section 4, subsection O of the rule that access to books and records is for the purpose of verifying compliance with the standards of conduct and that access to such books and records also applies to books and records that predate an affiliated generator's becoming subject to the rule; and

8. Clarify in section 7 of the rule that the training of employees to ensure compliance with the rule is limited to those employees that have access or may have access to the types of confidential information that is not to be shared.

The Public Utilities Commission is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section.

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

Effective April 18, 2018.

CHAPTER 50

S.P. 124 - L.D. 383

Resolve, Directing the Department of Health and Human Services To Develop a Plan To Strengthen the Quality and Supply of Child Care Services

Sec. 1. Department of Health and Human Services to develop child care provider plan.

Resolved: That the Department of Health and Human Services shall develop a plan for increasing the number of child care providers participating in step 3 and step 4 of the child care quality rating system developed pursuant to the Maine Revised Statutes, Title 22, section 3737, subsection 3 and the graduated quality differential rates of reimbursement for those providers. The department shall consult with stakeholders as it develops the plan, including those groups involved with the contract for the Quality for ME Revision Project. In developing the plan the department shall:

1. Determine if sufficient funding is available under the federal child care and development fund block grant to be used to support additional reimbursement based on quality;

2. Develop incentives for child care providers to attain step 3 and step 4 ratings, including reimbursement differentials, grant programs, contracts, professional development, child care and educational training programs and increased infant and toddler care, while balancing the regulatory requirements and needs of the entire child care system;

3. Take into account the geographic differences in the State so that parents in all areas have access to child care providers at step 3 and step 4;

4. Develop definitions of "disabilities" and "special needs" for infants and toddlers to be used in quality standards;

5. Determine if the federal statutory and regulatory framework allows the differential plan being developed and if changes are required in the state child care and development fund plan to align with the differential plan;

6. Determine any state statutory or regulatory barriers to increasing the supply and quality of child care; and

7. Provide data on the existing numbers of children in need of care; child care providers by type, step on the child care quality rating system, geography, number of children currently served and capacity; and any other relevant factors; and be it further

Sec. 2. Report. Resolved: That the Department of Health and Human Services shall report its findings and statutory recommendations pursuant to section 1 no later than January 30, 2019 to the joint standing committee of the Legislature having jurisdiction over health and human services matters. The joint standing committee of the Legislature having jurisdiction over health and human services matters may report out legislation based on the findings of the report to the First Regular Session of the 129th Legislature.

See title page for effective date.

CHAPTER 51

H.P. 1222 - L.D. 1773

Resolve, Directing the Bureau of Parks and Lands To Transfer Land in the Town of Pittston

Preamble. The Constitution of Maine, Article IX, Section 23 requires that real estate held by the State for conservation or recreation purposes may not be reduced or its uses substantially altered except on the vote of 2/3 of all members elected to each House.

Whereas, the land authorized for transfer by this resolve is within the designations in the Maine Revised Statutes, Title 12, section 598-A; and

Whereas, the Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry may sell or exchange lands with the approval of the Legislature in accordance with the Maine Revised Statutes, Title 12, sections 1814, 1837 and 1851; now, therefore, be it

Sec. 1. Director of Bureau of Parks and Lands to convey land. Resolved: That the Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry shall by quitclaim deed without covenant, for negotiated value, and on such other terms and conditions as the director may direct, convey or release to the First Congregational Church of Pittston a portion with a total of not more than .30 acre of a parcel of land situated on Arnold Road in the Town of Pittston, County of Kennebec and recorded on the Town of Pittston property tax map U-13, Lot 9.

See title page for effective date.

CHAPTER 52

H.P. 1257 - L.D. 1812

Resolve, Directing an Independent, Nonpartisan, Objective Evaluation of the Provision of Indigent Legal Services

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

Whereas, the State of Maine has a constitutional obligation to provide indigent legal services; and

Whereas, the diversity in population density and availability of attorneys across the State can present challenges to providing consistent high-quality legal services to fulfill that obligation; and

Whereas, many factors external to the operation of the Maine Commission on Indigent Legal Services are driving up costs to both prosecution and defense; and

Whereas, the need to ensure the most efficient use of limited resources requires a study of the existing system to be conducted by an independent, outside, nonpartisan entity; and

Whereas, the Working Group to Improve the Provision of Indigent Legal Services recommended that such a study be conducted as soon as possible; and

Whereas, authorization and funding for the study need to be provided as soon as possible for the comprehensive study to be conducted in time for recommendations to be considered by the First Regular Session of the 129th Legislature; 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

Sec. 1. Legislative Council to contract for independent, nonpartisan, objective evaluation of obligation to provide indigent legal services. Resolved:

That the Legislative Council, through the Executive Director of the Legislative Council, shall contract with a qualified nonprofit organization that has, within the 12 months prior to the effective date of this resolve, provided consulting and evaluations regarding state indigent legal services systems to evaluate the existing system in the State for providing legal representation as required by both the Constitution of Maine and the United States Constitution and by the laws of the State and to provide recommendations to improve the structure, services and other elements of

the State's indigent legal services system. The executive director shall arrange for the evaluation to be completed and a report submitted to the joint standing committee of the 129th Legislature having jurisdiction over judiciary matters no later than January 15, 2019; and be it further

Sec. 2. Joint standing committee authorized to report out legislation. Resolved: That the joint standing committee of the 129th Legislature having jurisdiction over judiciary matters is authorized to submit legislation based on the report and recommendations contained in the report submitted pursuant to section 1 to the First Regular Session of the 129th Legislature; and be it further

Sec. 3. Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: Deappropriates funds on a one-time basis to offset the cost to provide funding for the purpose of entering into a contract with a nonprofit organization experienced in evaluating indigent legal services systems.

GENERAL FUND	2017-18	2018-19
All Other	(\$110,000)	\$0
GENERAL FUND TOTAL	(\$110,000)	\$0

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	(\$110,000)	\$0
DEPARTMENT TOTAL - ALL FUNDS	(\$110,000)	\$0

**LEGISLATURE
Legislature 0081**

Initiative: Appropriates funds on a one-time basis to the Legislature to provide funding for the purpose of entering into a contract with a nonprofit organization

experienced in evaluating indigent legal services systems.

GENERAL FUND	2017-18	2018-19
All Other	\$110,000	\$0
GENERAL FUND TOTAL	\$110,000	\$0

**LEGISLATURE
DEPARTMENT TOTALS**

GENERAL FUND	2017-18	2018-19
GENERAL FUND	\$110,000	\$0
DEPARTMENT TOTAL - ALL FUNDS	\$110,000	\$0

SECTION TOTALS

GENERAL FUND	2017-18	2018-19
GENERAL FUND	\$0	\$0
SECTION TOTAL - ALL FUNDS	\$0	\$0

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

Effective April 21, 2018.

CHAPTER 53

H.P. 1288 - L.D. 1851

Resolve, Regarding Legislative Review of Portions of Chapter 180: Performance Evaluation and Professional Growth Systems, a Late-filed Major Substantive Rule of the Department of Education

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature outside the legislative rule acceptance period; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 180: Performance Evaluation and Professional Growth Systems, a provisionally adopted major substantive rule of the Department of Education that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, is authorized only if the following changes are made:

1. The rule must be amended in Section 11(1) by including in the lists of educators described in Section 11(1) additional references to conditionally certified special education teachers, as described in Section 11(5);

2. The rule must be amended in Sections 11(3) and 11(4) to reduce from 2 years to one year the required period of employment for a teacher employed by a school administrative unit who holds a conditional certificate for a regular education endorsement or a conditional certificate for a special education endorsement as the requirement relates to the formative peer mentoring or coaching component of a performance evaluation and professional growth system implemented under the rule;

3. The rule must be amended in Section 11(5) to replace all references to the Maine Alternative Certification and Mentoring program in Section 11(5) with references to an alternative certification and mentoring program designated by the department; and

4. All other necessary changes must be made to the rule to ensure conformity throughout the rule with the changes directed in this section.

The Department of Education is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section.

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

Effective April 24, 2018.

**CHAPTER 54
H.P. 1289 - L.D. 1852**

Resolve, Regarding Legislative Review of Portions of Chapter 115: the Credentialing of Educational Personnel, a Late-filed Major Substantive Rule of the Department of Education

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature outside the legislative rule acceptance period; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 115: The Credentialing of Educational Personnel, a provisionally adopted major substantive rule of the Department of Education that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, is authorized only if the following changes are made:

1. The rule must be amended in Part I to require that school administrative units establish and maintain local credentialing committees substantially as proposed in the Department of Education's proposals submitted to the Joint Standing Committee on Education and Cultural Affairs on March 19, 2018 attached to the documents entitled "Quick View: Rule Chapter 115, Part I" and "Work Session for LD 1852: Committee Requests and DOE Responses";

2. The rule must be amended in Part I, Section 6 to restore the provisions in the current rule Chapter 115, Section 10.1 governing the qualifications and supervision of educational technicians I and II and to restore the requirement that educational technicians be

credentialed with certificates by the Department of Education;

3. The rule must be amended in Part I, Section 6(9)(D) to clarify that the standards determined by the school administrative unit for substitute personnel to serve for less than 6 weeks would require that substitute personnel have the minimum of a high school diploma;

4. The rule must be amended in Part I, Section 3 to revise the definition of "certificate" to make the correct reference to the Maine Revised Statutes, Title 20-A, section 13001-A, subsection 2;

5. The rule must be amended in Part I, Section 6(2)(B)(2)(B) to clarify that in the 5 years prior to applying for a Maine certification, the applicant must have 3 years of successful teaching experience under an appropriate comparable certificate in the same certification subject area and grade level in any state;

6. The rule must be amended in Part I, Section 4(2)(A)(3) to maintain the general credential requirements for the 6-month certification review in the electronic data system and to remove the reference to the Exhibit 1 NEO position codes that correspond with the certifications or endorsements in Part II of the rule;

7. The rule must be amended in Part I to ensure that all equivalencies between 6 semester hours and 90 hours of in-service training for renewal are consistent throughout Part I;

8. The rule must be amended in Part I to correct all cross-references to conform with other changes required pursuant to this resolve; and

9. The rule must be amended in Part II to remove all provisionally adopted changes to Part II. Final adoption of the provisionally adopted changes to Part II of the rule is not authorized.

The Department of Education is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section; and be it further

Sec. 2. Department of Education; major substantive rulemaking. Resolved: That, by January 11, 2019, the Department of Education shall provisionally adopt and submit to the Legislature for review any amendments to its Chapter 115 rules relating to the requirements for specific certificates and endorsements in the credentialing of education personnel that the department finds are necessary to align its Chapter 115 rules with applicable laws, other rules and any applicable department practices and policies.

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

Effective April 26, 2018.

CHAPTER 55

S.P. 731 - L.D. 1901

Resolve, To Recognize the 100th Anniversary of the American Legion on the Capitol Grounds

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

Whereas, the American Legion was founded in 1919 and the 100th Anniversary of the American Legion is an opportunity to look back on all the accomplishments and achievements of the American Legion and the impact the organization has had on American society, including the American Legion's contributions to national security and the welfare of veterans, veterans' families and communities; and

Whereas, in order to secure a plaque for display on the immediate grounds of the State House to honor the 100th Anniversary of the American Legion, the Department of the Secretary of State and the American Legion Department of Maine should work together as soon as funding is raised to design and construct the commemorative plaque; 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

Sec. 1. American Legion plaque on capitol grounds. Resolved: That the Department of the Secretary of State, referred to in this resolve as "the department," shall work with the American Legion Department of Maine to secure a plaque for display on the immediate grounds of the State House, as described in the Maine Revised Statutes, Title 3, section 902-A, subsection 2, to honor the 100th Anniversary of the American Legion; and be it further

Sec. 2. Funding assistance. Resolved: That the department may accept from outside sources, including the American Legion Department of Maine, donated goods, services and funding for the design and construction of the plaque; and be it further

Sec. 3. Report; final authorization. Resolved: That, prior to the creation of the plaque, the proposed design and location of the plaque must be submitted to the Executive Director of the Legislative Council for approval by the Legislative Council. The final authorization for the placement of the plaque must be made by the Legislative Council.

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

Effective May 1, 2018.

CHAPTER 56

H.P. 1307 - L.D. 1874

Resolve, To Ensure the Continued Provision of Services to Maine Children and Families

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

Whereas, to ensure the necessary and proper protection of children and families in the State this legislation must take effect 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

Sec. 1. Community Partnerships for Protecting Children contracts. Resolved: That, notwithstanding any other provision of law, the following contractual agreements entered into by the Department of Health and Human Services must be continued by the department in accordance with this resolve through at least January 31, 2019:

1. Contracts awarded pursuant to RFP number 201509167, Community Partnerships for Protecting Children:

- A. The Opportunity Alliance, agreement number CFS-17-8201;
- B. Broadreach Family and Community Services, agreement number CFS-17-8203;
- C. Community Concepts, agreement number CFS-17-8204; and
- D. Penquis, agreement number CFS-17-8205; and

2. The contract awarded pursuant to RFP number 201608176, Community Concepts, agreement number CFS-17-8206.

If a contract identified in this section is in effect on the effective date of this resolve, the department may not terminate the contract before and must continue the contract through at least January 31, 2019, unless the contracting party voluntarily agrees to a

termination of the contract before that date or unless there is a material breach of contract by the contracting party sufficient to justify a termination under the terms of the contract. If a contract identified in this section has been terminated by the department prior to the effective date of this resolve, the department shall immediately offer and, unless the contracting party does not consent, immediately reenter a contract with that party on the same terms as the terminated contract and may not terminate the contract before and must continue the contract through at least January 31, 2019, unless the contracting party voluntarily agrees to a termination of the contract before that date or unless there is a material breach of contract by the contracting party sufficient to justify a termination under the terms of the contract; and be it further

Sec. 2. Department review. Resolved: That the Department of Health and Human Services shall develop a plan for providing the services currently provided by the Community Partnerships for Protecting Children programs, including the Parents as Partners program, and the role of child abuse and neglect prevention councils. The department shall report the plan to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1, 2019. The joint standing committee may report out a bill on the subject matter of this resolve to the First Regular Session of the 129th Legislature.

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

Effective May 2, 2018.

CHAPTER 57

H.P. 1346 - L.D. 1907

Resolve, To Continue a Review of the State Employee and Teacher Retirement Plan

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

Whereas, this resolve continues a working group to evaluate and design retirement plan options for all state employees and teachers; and

Whereas, the working group has already been convened pursuant to Resolve 2017, chapter 14; and

Whereas, an interruption in the activities of the working group would be to the detriment of the goals and timelines established for the working group; 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

Sec. 1. Resolve 2017, c. 14, §2, amended.

Resolved: That Resolve 2017, c. 14, §2 is amended to read:

Sec. 2. Preliminary report. Resolved: That no later than January 1, 2018, the Maine Public Employees Retirement System shall submit to the Legislature ~~the a preliminary~~ report of the working group established in section 1 on the retirement plan option or options that the working group recommends for consideration by the Legislature, including any necessary implementing legislation that, notwithstanding Joint Rule 353, is authorized for introduction to the Second Regular Session of the 128th Legislature; and be it further

; and be it further

Sec. 2. Resolve 2017, c. 14, §3, enacted.

Resolved: That Resolve 2017, c. 14, §3 is enacted to read:

Sec. 3. Final report. Resolved: That no later than December 1, 2019, the Maine Public Employees Retirement System shall submit to the joint standing committee of the Legislature having jurisdiction over retirement matters the final report of the working group established in section 1 on the retirement plan option or options that the working group recommends, including proposed legislation. The joint standing committee is authorized to introduce legislation in the 129th Legislature on matters related to the report.

; and be it further

Sec. 3. Retroactivity. Resolved: That this resolve applies retroactively to January 1, 2018.

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

Effective May 2, 2018.

**CONSTITUTIONAL RESOLUTIONS OF THE STATE OF MAINE
AS PASSED AT
THE SECOND REGULAR SESSION OF THE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
2017**

(There were none.)

INITIATED BILL OF THE STATE OF MAINE
REFERRED TO THE VOTERS BY
THE ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
AND APPROVED AT REFERENDUM

CHAPTER 1
I.B. 2 - L.D. 1039

An Act To Enhance Access to
Affordable Health Care

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

PART A

Sec. A-1. 22 MRSA §3174-G, sub-§1, ¶F, as amended by PL 2011, c. 380, Pt. KK, §2, is further amended to read:

F. A person 20 to 64 years of age who is not otherwise covered under paragraphs A to E when the person's family income is below or equal to 125% of the nonfarm income official poverty line, ~~provided that as long as the commissioner shall adjust~~ adjusts the maximum eligibility level in accordance with the requirements of the paragraph.

(2) If the commissioner reasonably anticipates the cost of the program to exceed the budget of the population described in this paragraph, the commissioner shall lower the maximum eligibility level to the extent necessary to provide coverage to as many persons as possible within the program budget.

(3) The commissioner shall give at least 30 days' notice of the proposed change in maximum eligibility level to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters; ~~and~~

Sec. A-2. 22 MRSA §3174-G, sub-§1, ¶G, as enacted by PL 2011, c. 380, Pt. KK, §3, is amended to read:

G. A person who is a noncitizen legally admitted to the United States to the extent that coverage is allowable by federal law if the person is:

(1) A woman during her pregnancy and up to 60 days following delivery; or

(2) A child under 21 years of age; ~~and~~

Sec. A-3. 22 MRSA §3174-G, sub-§1, ¶H is enacted to read:

H. No later than 180 days after the effective date of this paragraph, a person under 65 years of age

who is not otherwise eligible for assistance under this chapter and who qualifies for medical assistance pursuant to 42 United States Code, Section 1396a(a)(10)(A)(i)(VIII) when the person's income is at or below 133% plus 5% of the nonfarm income official poverty line for the applicable family size. The department shall provide such a person, at a minimum, the same scope of medical assistance as is provided to a person described in paragraph E.

Cost sharing, including copayments, for coverage established under this paragraph may not exceed the maximum allowable amounts authorized under section 3173-C, subsection 7.

No later than 90 days after the effective date of this paragraph, the department shall submit a state plan amendment to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services ensuring MaineCare eligibility for people under 65 years of age who qualify for medical assistance pursuant to 42 United States Code, Section 1396a(a)(10)(A)(i)(VIII).

The department shall adopt rules, including emergency rules pursuant to Title 5, section 8054 if necessary, to implement this paragraph in a timely manner to ensure that the persons described in this paragraph are enrolled for and eligible to receive services no later than 180 days after the effective date of this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. A-4. Interim reporting. Between the effective date of the Maine Revised Statutes, Title 22, section 3174-G, subsection 1, paragraph H and the dates of approval of the state plan amendment by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services necessary for implementation of Title 22, section 3174-G, subsection 1, paragraph H, the Department of Health and Human Services shall provide monthly reports to the joint standing committee of the Legislature having jurisdiction over health and human services matters and to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs on the progress of implementation of that paragraph, any issues that might delay implementation or act as barriers to implementation and any possible solutions to those issues and barriers.

Sec. A-5. Reporting on implementation status. No later than one year after the effective date

of the Maine Revised Statutes, Title 22, section 3174-G, subsection 1, paragraph H, the Commissioner of Health and Human Services shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs on the status of implementation of Title 22, section 3174-G, subsection 1, paragraph H, including information on enrollment, costs, revenues generated from the Federal Government and other revenues, anticipated state savings and other issues pertinent to implementation.

PART B

Sec. B-1. Calculation and transfer of savings. The Commissioner of Health and Human Services, the Commissioner of Corrections and any state agency that recognizes savings as a result of implementation of the Maine Revised Statutes, Title 22, section 3174-G, subsection 1, paragraph H shall report within 60 days prior to the end of the first 12 months of enrollment under the Maine Revised Statutes, Title 22, section 3174-G, subsection 1, paragraph H to the joint standing committee of the Legislature having jurisdiction over health and human services matters, the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the amount of General Fund savings and other savings resulting from coverage provided under that paragraph, including but not limited to savings to substance abuse and mental health programs; medical services provided to persons in the care and custody of, or upon release by, the Department of Corrections or a county jail or regional jail; reimbursement to cities and towns for general assistance provided under Title 22, chapter 1161; services provided for individuals 21 years of age or older and under 64 years of age who are currently eligible for the MaineCare program under medically needy, spend-down criteria; services provided under the MaineCare program, Section 1115 Health Care Reform Demonstration for Individuals with HIV/AIDS; services provided for parents participating in family reunification activities under Title 22, chapter 1071; an estimate of savings for services provided to individuals who previously would have pursued a disability determination to qualify for coverage; services provided to individuals awaiting a MaineCare program disability determination for whom the applications are subsequently granted; services provided under the State's breast and cervical cancer treatment program; and other programs in which savings are achieved. The report must include the amount of savings realized during the preceding fiscal year by service area or program and the amount of savings projected to be achieved during the

remainder of that fiscal year and during the next fiscal year by service area or program.

Sec. B-2. Reporting of revenue. The Department of Administrative and Financial Services, Maine Revenue Services shall report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs no later than 60 days following the end of the first 12 months of enrollment under the Maine Revised Statutes, Title 22, section 3174-G, subsection 1, paragraph H regarding any new revenues, including any increase in federal medical assistance payments resulting from coverage provided under Title 22, section 3174-G, subsection 1, paragraph H. Prior to the end of state fiscal year 2018-19, the State Controller shall transfer any savings amounts identified under this section to the MaineCare Stabilization Fund established under Title 22, section 3174-KK.

Sec. B-3. Evaluation by legislative office. Within 90 days after the end of the first 12 months of enrollment under the Maine Revised Statutes, Title 22, section 3174-G, subsection 1, paragraph H, the Office of Fiscal and Program Review shall independently review reports required pursuant to sections 1 and 2 of this Part and report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters on its determination of the savings and new revenue, if any, resulting from implementation of Title 22, section 3174-G, subsection 1, paragraph H. This report must also include information about the amount of federal funds received by the State as a result of coverage authorized under that paragraph.

Effective January 3, 2018.

JOINT STUDY ORDERS

(There were none.)

**REVISOR'S REPORT
2017**

CHAPTER 1

Sec. 1. 5 MRSA §13056-D, sub-§3, ¶D, as enacted by PL 2009, c. 414, Pt. G, §1 and affected by §5, is corrected to read:

D. A subcommittee appointed by the panel to nominate finalists shall review all of the proposals, identify issues for full review and discussion by the panel and ~~recommended~~ recommend project finalists to the full panel for detailed review and consideration.

EXPLANATION

This section corrects a clerical error.

Sec. 2. 5 MRSA §13056-D, sub-§7, as enacted by PL 2009, c. 414, Pt. G, §1 and affected by §5, is corrected to read:

7. Communities for Maine's Future Fund created. The Communities for Maine's Future Fund, ~~known~~ referred to in this subsection as "the fund," is established to provide funding for the rehabilitation, revitalization and enhancement of downtowns and village centers and main streets in the State. The fund is a dedicated, nonlapsing fund, and all revenues deposited in the fund remain in the fund and must be disbursed in accordance with this section.

EXPLANATION

This section corrects clerical errors.

Sec. 3. 5 MRSA §13056-E, sub-§1, as enacted by PL 2009, c. 414, Pt. G, §2 and affected by §5, is corrected to read:

1. Application for downtown improvement or asset grants. In addition to the other forms of financial assistance available, an eligible municipality or group of municipalities may apply for a downtown and community development grant from the Communities for Maine's Future Fund established in section 13056-D, subsection 7 and referred to in this section as "the fund," the proceeds of which must be used to acquire, design, plan, construct, enlarge, repair, protect or enhance downtown improvements or assets. The department may prescribe an application form or procedure for an eligible municipality or group of municipalities to apply for a grant under this section. The application must include all information necessary for the purpose of implementing this section.

EXPLANATION

This section corrects a clerical error.

Sec. 4. 12 MRSA §6087, sub-§2, ¶A, as enacted by PL 2017, c. 52, §2, is corrected to read:

A. Make recommendations to the commissioner on all matters concerning the health of the seaweed resource, its ecosystem and the industry it supports-; and

EXPLANATION

This section makes a technical correction.

Sec. 5. 12 MRSA §6371, sub-§4, ¶I, as enacted by PL 2017, c. 197, §3, is corrected to read:

I. Title 17-A, ~~sections~~ section 207, 209, 210, 210-A or 211, when the offense is committed against a marine patrol officer or a family member of a marine patrol officer as a result of the marine patrol officer performing what the license holder knows or has reason to know are the marine patrol officer's official duties. As used in this paragraph, "family member" means a spouse, brother, sister, son-in-law, daughter-in-law, parent by blood, parent by adoption, mother-in-law, father-in-law, child by blood, child by adoption, stepchild, step-parent, grandchild or grandparent.

EXPLANATION

This section corrects a clerical error.

Sec. 6. 14 MRSA §1202-A, as amended by PL 2017, c. 223, §3, is corrected to read:

§1202-A. Prohibition of discrimination

A citizen ~~shall~~ may not be excluded from jury service in this State on account of race, color, religion, sex, sexual orientation as defined in Title 5, section 4553, subsection 9-C, national origin, ancestry, economic status, marital status, age or physical handicap, except as provided in this chapter.

EXPLANATION

This section corrects a grammatical error.

Sec. 7. 14 MRSA §4422, sub-§13, ¶E, as amended by PL 2017, c. 177, §2, is corrected to read:

E. A payment or account under a stock bonus, pension, ~~profit-sharing~~ profit-sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

- (1) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;
- (2) The payment is on account of age or length of service; and
- (3) The plan or contract does not qualify under the United States Internal Revenue Code of 1986, Section 401(a), 403(a), 403(b), 408 or 409.

EXPLANATION

This section corrects a clerical error.

Sec. 8. 14 MRSA §6030-F, as enacted by PL 2015, c. 455, §1, is corrected to read:

§6030-F. Firearms in public federally subsidized housing

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

- A. "Firearm" has the same meaning as in Title 12, section 10001, subsection 21.
- B. "Rental agreement" means an agreement, written or oral, and valid rules and regulations embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.
- C. "Subsidized apartment" means a rental unit for which the landlord receives rental assistance payments under a rental assistance agreement administered by the United States Department of Agriculture under the multifamily housing rental assistance program under Title V of the federal Housing Act of 1949 or receives housing assistance payments under a housing assistance payment contract administered by the United States Department of Housing and Urban Development under the housing choice voucher program, the new construction program, the substantial rehabilitation program or the moderate rehabilitation program under Section 8 of the United States Housing Act of 1937. "Subsidized apartment" does not include owner-occupied housing accommodations of 4 units or fewer.

2. Prohibition or restriction on firearms prohibited. A rental agreement for a subsidized apartment may not contain a provision or impose a rule that requires a person to agree, as a condition of tenancy, to a prohibition or restriction on the lawful ownership, use or possession of a firearm, a firearm component or ammunition within the tenant's specific rental unit. A landlord may impose reasonable restrictions related to the possession, use or transport of a firearm, a firearm component or ammunition within common areas as

long as those restrictions do not circumvent the purpose of this subsection. A tenant shall exercise reasonable care in the storage of a firearm, a firearm component or ammunition.

3. Damages; attorney's fees. If a landlord brings an action to enforce a provision or rule prohibited under subsection 2, a tenant, tenant's household member or guest may recover actual damages sustained by that tenant, tenant's household member or guest and reasonable attorney's fees.

4. Immunity. Except in cases of willful, reckless or gross negligence, a landlord is not liable in a civil action for personal injury, death, property damage or other damages resulting from or arising out of an occurrence involving a firearm, a firearm component or ammunition that the landlord is required to allow on the property under this section.

5. Exception. This section does not apply to any prohibition or restriction that is required by federal or state law, rule or regulation.

EXPLANATION

This section corrects a headnote to reflect the substance of the section.

Sec. 9. 15 MRSA §5825, sub-§1, as enacted by PL 1987, c. 420, §2, is corrected to read:

1. Records of forfeited property. Any officer, department or agency having custody of property subject to forfeiture under section 5821 or having disposed of the property shall maintain complete records showing:

- A. From whom it received the property;
- B. Under what authority it held, received or disposed of the property;
- C. To whom it delivered the property;
- D. The date and manner of destruction or disposition of the property; and
- E. The exact kinds, quantities and forms of the property.

The records ~~shall~~ must be open to inspection by all federal and state officers responsible for enforcing federal and state drug control laws. Persons making final disposition or destruction of the property under court order shall report, under oath, to the court the exact circumstances ~~of~~ of the disposition or destruction.

EXPLANATION

This section corrects a clerical and a grammatical error.

Sec. 10. 17 MRSA §1831, sub-§4-A, as enacted by PL 2017, c. 284, Pt. KKKKK, §7, is corrected to read:

4-A. Gambling Control Unit. "Gambling Control Unit" or "unit" means the bureau within the Department of Public Safety under Title 25, section 2902, subsection 12 or an authorized representative of the Gambling Control Unit.

EXPLANATION

This section corrects a clerical error.

Sec. 11. 20-A MRSA §15683, sub-§1, ¶D, as amended by PL 2005, c. 2, Pt. D, §47 and affected by §§72 and 74 and by c. 12, Pt. WW, §18, is corrected to read:

D. If the school administrative unit is eligible for targeted technology resource funds pursuant to section 15681, subsection 1, the sum of:

(1) The product of the elementary school level and middle school level per-pupil amount for targeted technology resource funds calculated pursuant to section 15681, subsection 3 multiplied by the kindergarten to grade 8 portion of the pupil count calculated pursuant to section 15674, subsection 1, paragraph C, subparagraph (1); and

(2) The product of the high school level per-pupil amount for targeted technology resource funds calculated pursuant to section 15681, subsection 3 multiplied by the grade 9 to 12 portion of the pupil count calculated pursuant to section 15674, subsection 1, paragraph C, subparagraph (1);

EXPLANATION

This section corrects a clerical error.

Sec. 12. 22 MRSA §1963, sub-§3, ¶F, as enacted by PL 2017, c. 312, Pt. A, §1, is corrected to read:

F. Support for the public health infrastructure under chapter 152, including, but not limited to, the district coordinating councils for public health as defined in section 411, subsection 3 and local public health officers and the creation and implementation of district public health improvement plans; ~~and~~

EXPLANATION

This section makes a technical correction.

Sec. 13. 22 MRSA §2425, sub-§12, ¶B, as enacted by PL 2013, c. 394, §6, is corrected to read:

B. Primary caregiver fees are as follows.

(1) There is no annual fee to register a primary caregiver who does not cultivate marijuana for a qualifying patient.

(2) There is an annual fee to register a primary caregiver who has been designated to cultivate marijuana under ~~subsection~~ section 2423-A, subsection 1, paragraph F. The fee must be not less than \$50 and not more than \$300 for each qualifying patient who has designated the primary caregiver.

(3) There is no fee for a registered primary caregiver to register for the remainder of the registration period a new qualifying patient in place of a former qualifying patient who has revoked the designation of the primary caregiver.

EXPLANATION

This section corrects a clerical error.

Sec. 14. 22 MRSA §2625, 3rd ¶, as repealed and replaced by PL 1977, c. 694, §365, is corrected to read:

This chapter ~~shall~~ may not be construed to ~~effect~~ affect or prevent the practices of any other legally recognized profession.

EXPLANATION

This section corrects a clerical and a grammatical error.

Sec. 15. 22 MRSA §8823, sub-§2, ¶A, as enacted by PL 1999, c. 647, §2, is corrected to read:

A. An audiologist, a physician, a speech-language pathologist, a nurse, a certified teacher of the deaf and a person who provides early intervention services to children who are deaf or hard-of-hearing through the ~~Governor~~ Governor Baxter School for the Deaf;

EXPLANATION

This section corrects a clerical error.

Sec. 16. 28-A MRSA §2, sub-§6-B, as enacted by PL 1993, c. 266, §1, is corrected to read:

6-B. B.Y.O.B B.Y.O.B. sponsor. "B.Y.O.B B.Y.O.B. sponsor" means a person who conducts or holds a B.Y.O.B. function and is not required to register as a bottle club pursuant to section 161.

EXPLANATION

This section corrects a clerical error.

Sec. 17. 28-A MRSA §2, sub-§15, ¶B-2, as enacted by PL 1993, c. 730, §9, is corrected to read:

B-2. ~~Bed and breakfast.~~ "Bed and breakfast" means a place that advertises itself as a bed and breakfast where the public for a fee may obtain overnight accommodations that include a sleeping room or rooms and at least one meal per day.

EXPLANATION

This section corrects a clerical error.

Sec. 18. 28-A MRSA §1355-A, sub-§2, ¶K, as enacted by PL 2017, c. 123, §1, is corrected to read:

K. For the purposes of selling liquor for on-premises and off-premises consumption, a licensee who operates more than one facility licensed for the manufacture of liquor under this section may:

(1) Transfer product produced by the licensee in bulk or packaged in kegs, bottles or cans, including by the case, at one facility licensed for the manufacture of liquor to another facility at which the licensee is licensed to manufacture liquor or to any location where the licensee:

- (a) Serves samples of the manufacturer's product in accordance with subsection 2, paragraphs E and F; and
- (b) Is authorized under this section to sell the manufacturer's product to nonlicensees for off-premises consumption; and

(2) Transfer product produced by the licensee in bulk or packaged in kegs, bottles or cans, including by the case, from a facility at which the licensee is licensed to manufacture liquor to any establishment licensed for on-premises consumption under chapter 43 operated by the licensee as authorized under paragraph I.

If the same person or persons hold a majority ownership interest of greater than 50% in more than one facility licensed for the manufacture of liquor under this section, the person or persons is ~~are~~ considered one licensee for the purpose of transferring liquor as authorized by this paragraph.

EXPLANATION

This section corrects a clerical error.

Sec. 19. 28-A MRSA §1366, sub-§3, ¶¶E and F, as amended by PL 2017, c. 168, §2, are corrected to read:

E. All wine, spirits and malt liquor must be pre-packaged and sold by the bottle or case; ~~and~~

F. Taste testing of wine, spirits and malt liquor may be conducted in accordance with section 1367; ~~and~~

EXPLANATION

This section makes technical corrections.

Sec. 20. 28-A MRSA §1367, sub-§2, ¶¶B and C, as enacted by PL 2017, c. 168, §4, are corrected to read:

B. An individual at a taste-testing activity may not be served a taste-testing sample of more ~~that~~ than 4 ounces of malt liquor, 1 1/2 ounces of wine or 1/2 ounce of spirits. An individual is limited to 6 samples per day per manufacturer licensed under section 1355-A.

C. Malt liquor, wine or spirits for taste testing may not be poured in advance and made available for individuals ~~participation~~ participating in the taste testing to serve themselves.

EXPLANATION

This section corrects clerical errors.

Sec. 21. 30-A MRSA §4201, sub-§§3 and 5, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, are corrected to read:

3. Plumbing. "Plumbing" means the installation, alteration or replacement of pipes, fixtures and other apparatus for bringing in potable water, removing ~~waste water~~ wastewater and the piping connections to heating systems using water. Except for the initial connection to a potable water supply and the final connection that discharges indirectly into a public sewer or ~~waste water~~ wastewater disposal system, the following are excluded from this definition:

- A. All piping, equipment or material used exclusively for manufacturing or industrial processes;
- B. The installation or alteration of automatic sprinkler systems used for fire protection and standpipes connected to automatic sprinkler systems or overhead;
- C. Building drains outside the foundation wall or structure;
- D. The replacement of fixtures with similar fixtures at the same location without any alteration of pipes; or
- E. The sealing of leaks within an existing line.

5. Subsurface ~~waste water~~ wastewater disposal system. "Subsurface ~~waste water~~ wastewater disposal system" means:

A. Any system for the disposal of waste or ~~waste water~~ wastewater on or beneath the surface of the earth including, but not limited to:

- (1) Septic tanks;
- (2) Drainage fields;
- (3) Grandfathered cesspools;
- (4) Holding tanks; or
- (5) Any other fixture, mechanism or apparatus used for those purposes; but

B. Does not include:

- (1) Any discharge system licensed under Title 38, section 414;
- (2) Any surface ~~waste-water~~ wastewater disposal system; or
- (3) Any municipal or quasi-municipal sewer or ~~waste-water~~ wastewater treatment system.

EXPLANATION

This section corrects clerical errors.

Sec. 22. 30-A MRSA §4301, sub-§1, as repealed and replaced by PL 2001, c. 673, §1, is corrected to read:

1. Affordable housing. "Affordable housing" means a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law ~~412~~ 75-412, 50 Stat. 888, Section 8, as amended.

EXPLANATION

This section corrects a cross-reference.

Sec. 23. 30-A MRSA §4702, sub-§6, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is corrected to read:

6. Elderly. "Elderly" means a person or family as defined in the United States Housing Act of 1937, Public Law ~~412~~ 75-412, 50 Stat. 888, as amended.

EXPLANATION

This section corrects a cross-reference.

Sec. 24. 30-A MRSA §4722, sub-§1, ¶DD, as amended by PL 2017, c. 234, §17, is corrected to read:

DD. Certify affordable housing projects for the purpose of the income tax credit increase under Title 36, section 5219-BB, subsection 3; adminis-

ter and enforce the affordability requirements set forth in this paragraph; and perform other functions described in this paragraph and necessary to the powers and duties described in this paragraph.

(1) For purposes of this paragraph, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Affordable housing" means a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law ~~412~~ 75-412, 50 Stat. 888, Section 8, as amended.

(b) "Affordable housing project" means a project in which:

(i) At least 50% of the aggregate square feet of the completed project is housing of which at least 50% of the aggregate square feet of the completed housing creates new affordable housing; or

(ii) At least 33% of the aggregate square feet of the completed project creates new affordable housing.

(2) An affordable housing project for which the owner of the property received the income tax credit increase under Title 36, section 5219-BB, subsection 3 must remain an affordable housing project for 30 years from the date the affordable housing project is placed in service. If the property does not remain an affordable housing project for 30 years from the date the affordable housing project is placed in service, the owner of the property shall pay to the Maine State Housing Authority for application to the Housing Opportunities for Maine Fund established under section 4853 an amount equal to the income tax credit increase allowed under Title 36, section 5219-BB, subsection 3, plus interest on that amount at the rate of 7% per annum from the date the property is placed in service until the date of payment of all amounts due. The affordability requirements and the repayment obligation in this subparagraph must be set forth in a restrictive covenant executed by the owner of the property and the affordable housing project for the benefit of and enforceable by the Maine State Housing Authority and recorded in the appropriate registry of deeds before the owner of the property

claims the income tax credit increase under Title 36, section 5219-BB, subsection 3.

(3) If the repayment obligation in subparagraph (2) is not fully satisfied after written notice is sent by certified mail or registered mail to the owner of the property at the owner's last known address, the Maine State Housing Authority may file a notice of lien in the registry of deeds of the county in which the real property subject to the lien is located. The notice of lien must specify the amount and interest due, the name and last known address of the owner, a description of the property subject to the lien and the Maine State Housing Authority's address and the name and address of its attorney, if any. The Maine State Housing Authority shall send a copy of the notice of lien filed in the registry by certified mail or registered mail to the owner of the property at the owner's last known address and to any person who has a security interest, mortgage, lien, encumbrance or other interest in the property that is properly recorded in the registry of deeds in which the property is located. The lien arises and becomes perfected at the time the notice is filed in the appropriate registry of deeds in accordance with this subparagraph. The lien constitutes a lien on all property with respect to which the owner receives the income tax credit increase under Title 36, section 5219-BB, subsection 3 and the proceeds of any disposition of the property that occurs after notice to the owner of the repayment obligation. The lien is prior to any mortgage and security interest, lien, restrictive covenant or other encumbrance recorded, filed or otherwise perfected after the notice of lien is filed in the appropriate registry of deeds. The lien may be enforced by a turnover or sale order in accordance with Title 14, section 3131 or any other manner in which a judgment lien may be enforced under the law. The lien must be in the amount of the income tax credit increase allowed under Title 36, section 5219-BB, subsection 3, plus interest on that amount at the rate of 7% per annum from the date the property is placed in service until the date of payment of all amounts due. Upon receipt of payment of all amounts due under the lien, the Maine State Housing Authority shall execute a discharge lien for filing in the registry or offices in which the notice of lien was filed.

(4) Annually by every August 1st until and including August 1, 2023, the Maine State Housing Authority shall review the report issued pursuant to Title 27, section 511, sub-

section 5, paragraph A to determine the percentage of the total aggregate square feet of completed projects that constitutes new affordable housing, rehabilitated and developed using:

- (a) Either of the income tax credits under Title 36, section 5219-BB, subsection 2; and
- (b) The income tax credit increase under Title 36, section 5219-BB, subsection 3.

If the total aggregate square feet of new affordable housing does not equal or exceed 30% of the total aggregate square feet of rehabilitated and developed completed projects eligible for a credit under Title 36, section 5219-BB, the Maine State Housing Authority and Maine Historic Preservation Commission shall notify the State Tax Assessor of this fact;

EXPLANATION

This section corrects a cross-reference.

Sec. 25. 30-A MRSA §4753, sub-§3, as enacted by PL 2015, c. 424, §1, is corrected to read:

3. Universal application and waiting list. The Maine State Housing Authority and municipal housing authorities shall establish a single, streamlined application for tenant-based rental assistance under the United States Housing Act of 1937, Public Law 412 75-412, 50 Stat. 888, Section 8 by which families may apply for housing assistance in any geographic area of the State and shall also establish a statewide, centralized waiting list for that tenant-based rental assistance. The Maine State Housing Authority and municipal housing authorities shall establish a method for individuals or families to submit applications and to update applications for rental assistance by electronic means.

The Maine State Housing Authority and the Department of Health and Human Services shall ensure that an application or an addendum to an application submitted pursuant to this subsection may also be used by individuals and families who choose to apply for the Bridging Rental Assistance Program established in Title 34-B, section 3011 and a federal shelter plus care program authorized by the federal McKinney-Vento Homeless Assistance Act, Public Law 100-77 (1987) as amended by the federal Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, Public Law 111-22, Division B (2009).

EXPLANATION

This section corrects a cross-reference.

Sec. 26. 30-A MRSA §5002, sub-§11, as enacted by PL 1989, c. 601, Pt. B, §4, is corrected to read:

11. Lower income households. "Lower income households" means low-income and very low-income households as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law ~~442 75-412~~, 50 Stat. 888, Section 8, as amended.

EXPLANATION

This section corrects a cross-reference.

Sec. 27. 30-A MRSA §5246, sub-§1, as enacted by PL 2003, c. 426, §1, is corrected to read:

1. Affordable housing. "Affordable housing" means a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law ~~442 75-412~~, 50 Stat. 888, Section 8, as amended.

EXPLANATION

This section corrects a cross-reference.

Sec. 28. 32 MRSA §1202-A, sub-§4, ¶B, as enacted by PL 2017, c. 198, §17, is corrected to read:

B. In order to obtain a license under this subsection, a person must first pass an examination approved by the board and provide evidence of having:

(1) Worked at least 12,000 hours in the field of electrical installations as a licensed helper electrician or apprentice electrician under the direct supervision of a master ~~election~~ electrician, journeyman electrician or limited electrician, or worked at least 4,000 hours in the field of electrical installations as a journeyman electrician or journeyman-in-training electrician under the indirect supervision of a master electrician or limited electrician and having completed a program of study consisting of 576 hours as approved by the board or from an accredited institution. The 576 hours must consist of 450 hours of required study, including a course of 45 hours in the current National Electrical Code and 126 hours of degree-related courses; or

(2) Comparable work experience or education or training, or a combination of work experience, education and training, completed within the State or outside the State, that is acceptable to the board.

EXPLANATION

This section corrects a clerical error.

Sec. 29. 32 MRSA §1852, 3rd ¶, as amended by PL 2017, c. 113, §2, is corrected to read:

All machines, apparatus, vessels, fountains, tanks or other equipment, caps and ingredients used in the manufacture of beverages must be kept in a sanitary condition. No vessels or tanks ~~must~~ may be used for syrup mixing or for storing such mixed syrup unless they are of glass or stainless steel, porcelain lined, block tin lined or made of some other suitable impervious material.

EXPLANATION

This section corrects a grammatical error.

Sec. 30. 32 MRSA §14049-A, first ¶, as enacted by PL 2017, c. 270, §1, is corrected to read:

For the purpose of determining whether within a 12-month period an appraisal management company oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state or 25 or more certified or licensed appraisers in 2 or more states and ~~therefor~~ therefore qualifies as an appraisal management company pursuant to this chapter, the following provisions apply.

EXPLANATION

This section corrects a clerical error.

Sec. 31. 34-B MRSA §3011, as enacted by PL 2015, c. 267, Pt. WW, §1, is corrected to read:

§3011. Bridging Rental Assistance Program

The Bridging Rental Assistance Program is established within the department as a transitional housing voucher program. The purpose of the program is to assist persons with mental illness with housing assistance for up to 24 months or until they receive assistance from a housing voucher program administered by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law ~~442 75-412~~, 50 Stat. 888, Section 8 or receive an alternative housing placement. The department shall adopt rules to carry out the purpose of the program. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

EXPLANATION

This section corrects a cross-reference.

Sec. 32. 35-A MRSA §3209-A, as enacted by PL 2011, c. 262, §1, is corrected to read:

§3209-A. Net energy billing

The commission may adopt or amend rules governing net energy billing. Rules adopted or amended under this ~~subsection~~ section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. "Net energy billing" means a billing and metering practice under which a customer is billed on the basis of net energy over the billing period taking into account accumulated unused kilowatt-hour credits from the previous billing period.

EXPLANATION

This section corrects an internal reference.

Sec. 33. 36 MRSA §5219-QQ, sub-§2, ¶F, as enacted by PL 2017, c. 297, §2, is corrected to read:

F. Upon making the qualified investment and completing the headquarters and employment criteria in subsection 1, paragraph ~~H~~ G, a certified applicant shall submit an application to the commissioner for a certificate of completion. If the commissioner determines that a qualified investment has been made, the applicant's headquarters is located in the State and at least 25% of the applicant's full-time employees, as measured at the time of application for the certificate of approval, are based in the State, the commissioner shall issue a certificate of completion to the certified applicant as soon as is practical.

EXPLANATION

This section corrects a cross-reference.

Sec. 34. 38 MRSA §490-RR, sub-§2, ¶D, as enacted by PL 2017, c. 142, §9, is corrected to read:

D. The financial assurance required by the department under this subsection must consist of a trust fund that is secured with any of the following forms of negotiable property, or a combination thereof, as approved by the department:

- (1) A cash account in one or more federally insured accounts;
- (2) Negotiable bonds issued by the United States or by a state or a municipality having a Standard and Poor's credit rating of AAA or AA or an equivalent rating from a national securities credit rating service; or
- (3) Negotiable certificates of deposit in one or more federally insured depositories.

EXPLANATION

This section corrects a clerical error.

Sec. 35. 39-A MRSA §407, as amended by PL 2015, c. 469, §7, is corrected to read:

**§407. Preservation of existing employer status
Misclassification of employees**

An employer with a currently approved workers' compensation policy or a currently accepted self-insurance workers' compensation policy that has misclassified one or more employees has failed to secure payment of compensation within the meaning of section 324, subsection 3 and is subject to the penalties prescribed by that section.

EXPLANATION

This section corrects a headnote to reflect the substance of the section.

Sec. 36. PL 2017, c. 2, Pt. N, §1 is corrected to read:

Sec. N-1. PL 1997, c. 763, §5 is amended to read:

Sec. 5. Payment of retiree health insurance premiums. The Maine ~~Technical Community College System~~ shall make ~~contributions toward payment of the unfunded liability costs and administrative costs to the Maine State Retirement System~~ and payment of the retiree health insurance premiums to the Department of Administrative and Financial Services on behalf of Maine ~~Technical Community College System employees~~ retirees who ~~elect~~ elect to participate in a defined contribution plan offered by the Board of Trustees of the Maine ~~Technical Community College System~~ as provided in the Maine Revised Statutes, Title 20-A, section 12722, subsection 2 ~~at the same percentage as the Maine Technical College System contributes on behalf of its employees who are active members of the retirement system.~~

EXPLANATION

This section corrects a clerical error.

Sec. 37. PL 2017, c. 170, Pt. C, §9 is corrected to read:

Sec. C-9. Retroactivity. That section of this Part that ~~amends~~ repeals and replaces the Maine Revised Statutes, Title 36, section 1760, subsection 5-A applies retroactively to sales occurring on or after October 1, 2016.

EXPLANATION

This section corrects a clerical error.

Sec. 38. PL 2017, c. 257, §6 is corrected to read:

Sec. 6. Application. ~~The~~ Those sections of the ~~bill~~ this Act that amend the Maine Revised Statutes, Title 36, sections 2011 and 2555 apply to requests for credit or refund of sales tax paid to a retailer and ser-

vice provider tax paid to a service provider for which administrative or judicial review is still available.

EXPLANATION

This section corrects a clerical error.

SELECTED MEMORIALS AND JOINT RESOLUTIONS

**JOINT RESOLUTION
RECOGNIZING THE WEEK
OF JANUARY 7, 2018 AS
HUMAN TRAFFICKING
AWARENESS WEEK**

S.P. 663

WHEREAS, human trafficking is criminal recruiting, harboring, transporting, providing or obtaining a person for compelled labor or commercial sexual exploitation through the use of force, fraud or coercion, including but not limited to involuntary servitude, sex trafficking, debt bondage, domestic servitude and forced child labor, and can, but does not necessarily, include the physical transportation of a victim from one location to another; and

WHEREAS, human trafficking violates basic human rights, denies victims their personal freedom and knows no geographical boundaries; and

WHEREAS, traffickers target men, women and children, both United States citizens and foreign nationals, isolate them from society and exploit them for personal and monetary gain; and

WHEREAS, human trafficking is recognized as the fastest-growing criminal enterprise in the world, and the International Labour Organization estimates annual profits of \$150,000,000,000 from forced labor internationally; and

WHEREAS, the International Labour Organization estimated in 2012 that 26% of persons trafficked were children, and the National Center for Missing and Exploited Children estimated in 2014 that one out of every 6 endangered runaways in the United States reported to them was likely a child sex-trafficking victim; and

WHEREAS, victims of human trafficking suffer severe emotional, psychological and physical damage at the hands of their traffickers, who instill fear in their victims in order to keep them enslaved, resulting in complex post-traumatic stress disorder and increased rates of disease, drug addiction and other lifelong effects of trauma, and these experiences may require years of specialized health care and mental health services as part of a victim's recovery; and

WHEREAS, human trafficking exists in the State, and many state, federal and local agencies and organizations are working to prevent human trafficking, to intervene when human trafficking is discovered and to provide restorative care to victims; and

WHEREAS, no one person, organization, agency or community can eliminate human trafficking, but we can work together to educate our entire population about how we can all prevent human trafficking and

provide support to survivors of human trafficking and to their communities; and

WHEREAS, the State is committed to protecting the vulnerable and ending human trafficking through prevention, prosecution, education and awareness; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-eighth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to recognize the week of January 7, 2018 as Human Trafficking Awareness Week.

**Read and adopted by the Senate January 11, 2018
and the House of Representatives January 11, 2018.**

**JOINT RESOLUTION
MEMORIALIZING
CONGRESS TO
STRENGTHEN LAWS
AGAINST MASS VIOLENCE
AND DOMESTIC
TERRORISM,
CONDEMNING THE
VIOLENCE IN
CHARLOTTESVILLE,
VIRGINIA AND
EXPRESSING THE
COMMITMENT OF THE
LEGISLATURE TO UPHOLD
CONSTITUTIONAL RIGHTS**

S.P. 711

WHEREAS, on the night of Friday, August 11, 2017, a day before a white nationalist demonstration was scheduled to occur in Charlottesville, Virginia, hundreds of torch-bearing white nationalists, white supremacists, Klansmen and neo-Nazis chanted racist, anti-Semitic and anti-immigrant slogans and violently engaged with counter-demonstrators on and around the grounds of the University of Virginia in Charlottesville; and

WHEREAS, on Saturday, August 12, 2017, ahead of the scheduled start time of the planned march, protestors and counter-demonstrators gathered at Emancipation Park in Charlottesville; and

WHEREAS, the extremist demonstration turned violent, culminating in the death of peaceful counter-demonstrator Heather Heyer and injuries to 19 other individuals after a reported neo-Nazi sympathizer drove a vehicle into a crowd, which resulted in a charge of 2nd-degree murder, 3 counts of malicious wounding and one count of hit and run; and

SELECTED MEMORIALS AND JOINT RESOLUTIONS

WHEREAS, 2 Virginia State Police officers, Lieutenant Pilot H. Jay Cullen and Trooper Pilot Berke M. M. Bates, died in a helicopter crash as they patrolled the events occurring below them; and

WHEREAS, the Charlottesville community is engaged in a healing process following this horrific and violent display of bigotry; and

WHEREAS, the State fully supports the right to free speech, the right to assemble peaceably and the right to petition the government for a redress of grievances; however, the assembly in Charlottesville turned violent and it became clear that some in attendance were there to promote racial tensions, destroy our principles and do harm to the fabric of our nation; and

WHEREAS, any organization that perpetuates violence and terrorism has no place in a civil society; and

WHEREAS, any crimes committed by such organizations should be prosecuted to the fullest extent of the law; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-eighth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to condemn the violence and the attack that took place during the events on August 11 and August 12, 2017 in Charlottesville, Virginia; recognize the first responders who lost their lives in the course of monitoring the events; offer our deepest condolences to the families and friends of those individuals who were killed; extend our deepest sympathy and support to those individuals injured in the violence; and express our support for the Charlottesville community; and be it further

RESOLVED: That We reaffirm our sworn oaths to defend the Constitution of the United States and the Constitution of Maine and reaffirm our solemn commitment to continue to protect and champion the rights and liberties of Maine citizens that are guaranteed under the state and federal constitutions, including freedom of expression; freedom of association, including the right to attend meetings without being illegally monitored and the right to belong to an organization without fear of reprisal; freedom from unreasonable searches and seizures; and the right to due process protections; and be it further

RESOLVED: That We, your Memorialists, on behalf of the people we represent, take this opportunity to call upon our United States Representatives and Senators to review and, where warranted, strengthen laws to ensure law enforcement agencies have the necessary tools to prevent and prosecute acts of mass violence and domestic terrorism committed within the boundaries of our nation, as long as the laws do not infringe upon fundamental rights and liberties as rec-

ognized and enshrined in the United States Constitution and its amendments; and be it further

RESOLVED: That suitable copies of the resolution, duly authenticated by the Secretary of State, be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives and each member of the Maine Congressional Delegation as well as the members of the Virginia Congressional Delegation.

Read and adopted by the Senate March 20, 2018 and the House of Representatives March 22, 2018.

JOINT RESOLUTION SUPPORTING THE NATIONAL PARK SYSTEM

S.P. 737

WHEREAS, America's National Park System is a living testament to our citizens' valor and our nation's hardships, our victories and our traditions as Americans and has been called "America's best idea"; and

WHEREAS, the National Park System preserves the diversity, culture and heritage of all Americans and serves as a living classroom for future generations; and

WHEREAS, the National Park Service celebrated its centennial in 2016 and currently manages more than 400 nationally significant sites and an invaluable collection of more than 75,000 natural and cultural assets that span 84,000,000 acres across all 50 states, the District of Columbia and several United States territories and insular areas; and

WHEREAS, the National Park Service's mission is to preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education and inspiration of this and future generations; and

WHEREAS, in 2016, the National Park System had more than 331,000,000 visits, more than 3,000,000 alone to Acadia National Park in Maine; and

WHEREAS, it is estimated that in 2016 park visitors spent more than \$18,400,000,000 at national park sites, including more than \$275,000,000 in Maine's communities adjacent to Acadia National Park; and

WHEREAS, the National Park Service has the obligation to preserve our nation's history, promote access to national parks for all citizens, stimulate revenue to sustain itself and nearby communities, educate the public about America's natural, cultural and historical resources and provide safe facilities and environs for the enjoyment of these resources; and

WHEREAS, in 2016, the National Park Service estimated a deferred maintenance backlog of nearly

SELECTED MEMORIALS AND JOINT RESOLUTIONS

\$11,300,000,000, which includes repairs to aging historical structures, trails, sewers, drainage and thousands of miles of roads, bridges, tunnels and other vital infrastructure, more than \$70,000,000 of which is in Maine; and

WHEREAS, it is important that America's national parks be maintained to ensure our natural places and our history are preserved and documented for future generations and for the adjacent communities that rely on the direct and indirect economic benefits generated by visits to national park sites; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-eighth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to express our support for the creation of a reliable, predictable stream of resources to address deferred maintenance needs in America's National Park System, including Acadia National Park; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to each Member of the Maine Congressional Delegation.

Read and adopted by the Senate April 17, 2018 and the House of Representatives April 17, 2018.

**JOINT RESOLUTION
COMMEMORATING
MARTIN LUTHER KING,
JR. DAY IN THE YEAR OF
THE 50TH ANNIVERSARY
OF HIS DEATH**

H.P. 1234

WHEREAS, January 15, 2018 marks the national and state holiday in honor of Martin Luther King, Jr., commemorating his birth on January 15, 1929; and

WHEREAS, Martin Luther King, Jr., advocated the furtherance of civil and human rights for Americans through nonviolent acts of civil disobedience; and

WHEREAS, this man of powerful voice and spirit showed this country a dream of "an oasis of freedom and justice"; and

WHEREAS, for his tireless work to ensure equality and justice, Dr. King was awarded the Nobel Peace Prize, a high and honorable distinction, in 1964; and

WHEREAS, his eloquence, his perseverance and his faith moved mountains and brought about sweeping changes by appealing to the better instincts and consciences of his fellow human beings; and

WHEREAS, this year marks the 50th anniversary of the Memphis sanitation workers strike, which lasted

from February 11, 1968 to April 16, 1968 and which Dr. King declared to be a major part of the Poor People's Campaign, an effort to gain economic justice for poor Americans of diverse backgrounds; and

WHEREAS, during the strike, Dr. King delivered to the strikers his last speech, "I've Been to the Mountaintop," calling for unity, economic actions, boycotts and nonviolent protest while challenging the United States to live up to its ideals; and

WHEREAS, the life of Martin Luther King, Jr., which ended so tragically on April 4, 1968, is a shining example to Americans and citizens of the world at large of uncompromising dedication to democratic values; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-eighth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to acknowledge the extraordinary life and works of this teacher, reformer and humanitarian, Dr. Martin Luther King, Jr., and pause in our deliberations to recognize and commemorate the occasion of his birth.

Read and adopted by the House of Representatives January 16, 2018 and the Senate January 18, 2018.

**JOINT RESOLUTION
MEMORIALIZING THE
PRESIDENT OF THE
UNITED STATES AND THE
UNITED STATES
CONGRESS TO EXCLUDE
THE STATE OF MAINE
FROM OFFSHORE OIL AND
GAS DRILLING AND
EXPLORATION
ACTIVITIES**

H.P. 1279

WE, your Memorialists, the Members of the One Hundred and Twenty-eighth Legislature of the State of Maine now assembled in the Second Regular Session, most respectfully present and petition the President of the United States and the United States Congress as follows:

WHEREAS, the United States Department of the Interior, Bureau of Ocean Energy Management 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program has already been released and the programmatic environmental impact statement could be released as early as May 2018; and

WHEREAS, over 46,319 jobs and more than \$2,300,000,000 of the State's gross domestic product depend on clean, oil-free water and beaches and abundant fish and wildlife; and

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WHEREAS, over 65% of the State's ocean-derived income stems from our tourism and recreation sector, contributing over \$1,200,000,000 to the State's economy, and this economic sector benefits from and depends upon a healthy ocean and coast; and

WHEREAS, offshore oil and gas drilling and exploration activities place coastal communities at economic and ecological risk from oil spills and the pollution brought by routine drilling operations and onshore industrialization, threatening the quality of life and livelihoods of the State's citizens and important industries, such as tourism and recreation and commercial and recreational fishing, and small businesses that rely on a clean and healthy ocean and beaches; and

WHEREAS, the State recognizes that our communities and industries depend on a healthy coastal environment for the benefit of current and future residents, property owners and visitors; now, therefore, be it

RESOLVED: That We, your Memorialists, believe that offshore oil and gas drilling and exploration risks our economic and ecological health and therefore oppose any plan or legislation that encourages oil and gas exploration offshore that would negatively affect the citizens of the State; and be it further

RESOLVED: That We, your Memorialists, on behalf of the people we represent, take this opportunity to respectfully request that the President of the United States and the United States Congress direct the United States Department of the Interior, Bureau of Ocean Energy Management to exclude the State and its offshore areas from the 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Donald J. Trump, President of the United States, to Secretary of the Interior Ryan Zinke, to National Oil and Gas Leasing Program Development and Coordination Branch Chief Kelly Hammerle, to the President of the United States Senate, to the Speaker of the United States House of Representatives and to each Member of the Maine Congressional Delegation.

Read and adopted by the House of Representatives February 15, 2018 and the Senate March 1, 2018.

**JOINT RESOLUTION
RECOGNIZING VIETNAM
VETERANS APPRECIATION
DAY ON MARCH 29, 2018
H.P. 1329**

WHEREAS, the Vietnam War was fought in the Republic of South Vietnam from 1961 to 1975 and the

United States Armed Forces became involved in Vietnam to provide direct military support for the Republic of South Vietnam to defend itself against the growing communist threat from North Vietnam; and

WHEREAS, according to the United States Department of Veterans Affairs, 8,744,000 military personnel served on active duty during the Vietnam War and 2,594,000 personnel served within the borders of South Vietnam between January 1, 1965 and March 28, 1973; and

WHEREAS, on March 29, 1973, the United States Armed Forces completed the withdrawal of combat units and combat support units from South Vietnam; and

WHEREAS, the State of Maine has 343 names etched on the black granite wall of the Vietnam Veterans Memorial in the Nation's capital, and 11 of our soldiers are still missing in Southeast Asia; and

WHEREAS, March 30th of each year is Vietnam War Remembrance Day in Maine, in honor of the service and sacrifice of those veterans of the United States Armed Forces who served during the Vietnam War; and

WHEREAS, as with veterans returning from today's battlefields, those who served in Vietnam came home with both physical and unseen injuries of war, and many of those unseen injuries went undiagnosed and were not as well initially understood by the medical community and citizenry as they are now; and

WHEREAS, we must continue to honor the millions of men and women who served with valor during the Vietnam War, including those who suffered unseen injuries; and

WHEREAS, Vietnam Veterans Appreciation Day specifically honors the 7,200,000 living Vietnam War veterans and the 9,000,000 family members of those veterans; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-eighth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to join in the observance of Vietnam Veterans Appreciation Day in order to honor the contributions of living veterans who served in the United States Armed Forces in Vietnam; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Department of Defense, Veterans and Emergency Management.

Read and adopted by the House of Representatives March 29, 2018 and the Senate March 29, 2018.

**STATE OF THE STATE ADDRESS
OF
GOVERNOR PAUL R. LEPAGE
FEBRUARY 13, 2018**

Chief Justice Saufley, members of the 128th Legislature, distinguished guests, and my fellow citizens:

I want to briefly remember Paul Mitchell of Waterville, brother of Senator Mitchell, who passed away this weekend. He was a dedicated public servant and a good friend.

As I begin the last State of the State Address of my time as Governor of this great state, let me first thank my wife Ann—please stand—for her service to the people of Maine these past seven years. I would not be here tonight without you. Ann, you have made Maine proud as our First Lady—and our family is proud of you. In case I forget, happy Valentine's Day tomorrow.

I also thank our children. I appreciate my family's willingness to share my time with the duties of being Governor.

To Staff Sergeant Ronald Fowler of the Air Force's 243rd Engineer Installation Squadron, the military herald this evening, thank you for your selfless service to our state and nation. We congratulate you on being our state's 2018 Outstanding Airman of the Year.

Ann and I are grateful to all our military and their families for their service.

I would also like to recognize two members of my staff, Angela Kooistra our sergeant of security and Holly Lusk my chief of staff.

I'm here tonight to speak to you about the future of our state. We have made progress—but there is much more we could have done and more that we can do to move our state forward.

In his last State of the Union, President Ronald Reagan said: "If anyone expects just a proud recitation of the accomplishments of my administration, I say let's leave that to history; we're not finished yet. So, my message to you tonight is put on your work shoes; we're still on the job."

Now is not the time to slow down. I will continue working until the last minute of my last day.

I came into office saying I will put people before politics, and I have tried to do that. Politics as usual puts our most vulnerable Mainers at risk. As most of you know, I'm no fan of the status quo.

Today, special interests continue to highjack our ballot box and politicians continue to kowtow to wealthy lobbyists and welfare activists. The Legislature has forgotten about the Mainers who need our help the most.

Our elderly, our intellectually and physically disabled and even our youth are being left out of the process. I vow to spend my final year as Governor fighting for those Mainers who don't have a voice in Augusta.

For years I have listened to liberals talk about compassion. Subsidizing solar panels for wealthy homeowners at the expense of our needy is not compassionate. Raising taxes on hard-working families to expand welfare entitlements for able-bodied people is not compassionate. Catering to the activists in the halls of the State House instead of the struggling family businesses on Main Street is not compassionate.

I know what it's like to need help. That's why I meet one-on-one with constituents on Saturday mornings. That's why I get involved in cases that affect our elderly and our most vulnerable. They need our help. It's our job to help them. We are, after all, public servants.

REDUCING PROPERTY TAXES

For the past seven years as Governor, my priority has been to make all Mainers prosper.

Too many Maine families are facing skyrocketing property taxes that strain household budgets. Our elderly on fixed incomes are particularly vulnerable to these increases. You simply cannot tax your way to prosperity. As Chief Justice John Marshall wrote, "The power to tax is the power to destroy."

STATE OF THE STATE ADDRESS

School budgets are often blamed for property-tax increases. The real culprit is the tremendous amount of land and property value we've allowed to be taken off the tax rolls, leaving homeowners to pick up the tab. These landowners must contribute to our tax base.

It's time for all land and real estate owners to take the burden off homeowners and pay taxes or a fee in lieu of taxes. The federal government does! Maine property-tax payers need a break.

We proposed allowing municipalities to collect property taxes or fees from large non-profit entities, and we've tried to require land trusts to contribute to the tax rolls. We have been met with staunch resistance from Democrats.

We must think outside the box. Tough problems call for tough decisions and solutions. I don't walk away from tough decisions. I've proven that on occasion.

We established an online registry for all non-profits to report conservation-land ownership.

The result of all property-tax exemptions reported within municipalities exceeds \$18 billion. Think about that—\$18 billion.

The loss of that tax revenue has shifted over \$330 million in property taxes onto the backs of local homeowners.

My office is distributing to each legislator the total value of property taken off the tax rolls for each town, along with the estimated increase in taxes paid annually by property owners.

Over 4 million acres have been conserved by the federal and state governments, as well as non-profit organizations, such as land trusts. Nearly 20 percent of our state is conserved from development. This is an area larger than the size of Connecticut.

In 1993, about 35,800 acres of land was owned by land trusts. That number has increased by an astonishing 1,270 percent. Land trusts now control more than half-a-million acres with an estimated value of over \$400 million.

Ask your local officials how much land in your community has been taken off the tax rolls. Ask them

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how much in tax revenue it would be contributing today to help reduce your property taxes.

The desire to preserve land without benefit to the taxpayers or their input is out of control. We must restore balance.

We must ensure that all property owners are required to contribute to the local tax base. Everyone must pay their fair share. It's common sense.

Richard and Leonette Sukeforth are the elderly couple who were evicted from their home due to their inability to pay their property taxes on their fixed income. Due to health reasons, Mr. and Mrs. Sukeforth were unable to attend tonight.

In 2015, the town of Albion foreclosed the Sukeforths' home and sold it for \$6,500. A compassionate neighbor offered to pay the taxes, but the town officials refused to accept the money. The new owner evicted them and demolished their home.

I learned of Sukeforths' situation after the foreclosure had occurred—it was too late to help them. I submitted a Governor's bill to protect the elderly from tax lien foreclosures going forward.

We must fight to protect our parents and grandparents whose fixed income cannot keep up with rising property taxes.

This common-sense solution will require municipalities to be a bit more compassionate to our elders. I thank Representative Espling for sponsoring this bill, and I urge both chambers to pass it. This is the right thing to do for our senior citizens.

TAX CONFORMITY

My tax cuts have resulted in tangible savings for Maine families. A family of four earning \$90,000 pays 29 percent less than they did under the prior law. A family of four earning \$35,000 no longer pays the \$298 tax bill they did under the prior law. Despite what my colleagues to my left say, these are not tax breaks for the rich. These cuts are meaningful savings for hard-working families.

The new federal Tax Cut and Jobs Act will provide more savings for families and businesses. The federal tax cut will result in an estimated economic benefit of

approximately \$1 billion in 2019. More than \$500 million of that will be in direct income tax cuts for Mainers. Our small businesses will receive tax cuts of an additional \$200 million.

Whenever Congress changes the federal tax code, Maine must decide whether to conform our tax code to the federal changes. Doing so is better for the taxpayer because it simplifies tax filing.

It is also better for the state because the IRS takes the lead on income-tax compliance, and we do not have to fund duplicate services, like additional auditors, in Maine.

For that reason, I will be proposing legislation to conform to the new federal law. However, since strict conformity would result in a tax increase to Mainers, my bill will include a proposal that offsets any tax increase. Let me make this perfectly clear: I will not support any conformity measure that results in a net increase in income taxes.

In fact, I will not support ANY increase in taxes for either tax conformity or to pay for Medicaid expansion.

MEDICAID EXPANSION

Maine's previous experiment with Medicaid expansion plunged our state into financial disarray. However, make no mistake: Medicaid expansion is the law, and I will execute the law. But funding it is the Legislature's constitutional duty, as it is the Legislature's job to appropriate the funds.

Appropriate the money, so we can implement the law. The time is now—not after the next election.

I have laid out four basic principles to guide your decision on how to pay for Medicaid expansion. I will not jeopardize the state's long-term fiscal health. We must avoid the budget disasters of the past.

We must fund Medicaid expansion in a way that is sustainable and ongoing. Therefore, my principles are as follows:

1. No tax increases on Maine families or businesses.
2. No use of the Budget Stabilization Fund (which we call the "Rainy Day Fund").

3. No use of other one-time funding mechanisms—known as budget gimmicks.
4. Full funding for vulnerable Mainers who are still waiting for services, and no reduction of services or funding for our nursing homes or people with disabilities.

It would be fiscally irresponsible for the Legislature to demand we implement Medicaid expansion without adequate funding. It is simply not too much to ask the Legislature to prioritize our truly needy over those looking for a taxpayer-funded handout.

DHHS cannot hire and train the additional 105 staff needed to run the expanded Medicaid program without money. We cannot pay the state's share of the new enrollees' medical bills without funding.

Democrats, hospitals, advocacy groups and wealthy out-of-state special interests who campaigned for this referendum claim that adding 80,000 people to a taxpayer-funded entitlement program will save money. I take you at your word. Show me the money and put your plan in writing. Show the Maine people how you will pay for Medicaid expansion.

I ask Theresa Daigle and Josiah Godfrey to please stand up. These are the people you should be thinking about. Theresa has shared with me the hardships she and her son have experienced while awaiting services for his physical and intellectual challenges. Josiah has autism, an intellectual disability, and bipolar disorder. He qualifies for services, but he is stuck on your waitlist.

Because his mother will need to care for him, it will be impossible for her to continue working. She has been told that she may need to leave Josiah at St. Mary's and refuse to pick him up—thus making him homeless—in order to qualify for Section 21 services. THIS IS WRONG!

I ask that the Legislature fully fund these programs so people like the Daigles can get the help they desperately need and qualify for. I have proposed to fully fund them, but Legislators chose to use the money for other programs, like giving welfare to illegal immigrants. That is simply wrong. Maine people need to come first.

Do the right thing for Josiah and his worried mother. Fund the Section 21 and 29 programs.

STATE OF THE STATE ADDRESS

KEEPING YOUNG PEOPLE IN MAINE

Now, many legislators tell me that they don't pass bad bills. Let me give the Maine people tonight an example of a horrible bill.

I vetoed a bill that would prohibit 18-year-old adults from buying cigarettes, but the Legislature overturned it. This law denies rights and responsibilities to 18-year-old adults who want to purchase a legal product.

This is not about cigarettes—no one should ever start smoking. This is about protecting our personal choices from an ever-expanding nanny state.

Our laws must recognize one age when adulthood begins. You, the Legislature, must pick that age. I don't care what the age is, whether it is 18 or 21. It can't be both.

Legislators have no problem letting 18-year-olds vote for them in elections or die in wars. Let's think about that a moment—legislators think 18-year-olds are not adult enough to decide whether they should purchase cigarettes. But they think 18-year-olds are adult enough to vote on complex referendums like the legalization of marijuana, the elimination of the tip credit, and a 3 percent tax surcharge that would devastate our economy.

Young adults should be treated like adults. If 18-year-olds can fight for our country, pay taxes, get married and divorced and make personal medical decisions—and even younger teens can use birth control and smoke "medical" marijuana—then let's make adulthood start at 18. If they can do all that, they should be able to decide if they want to buy legal products.

The last I knew this was still a free country. That includes the freedom to make personal choices—free from government interference.

Frankly, drinking is no different, the federal government uses the threat of defunding road construction if 18 year olds are allowed to drink, so let's make adulthood 21.

INVESTING IN OUR ECONOMY

We are the oldest state in the nation. We must attract young people to Maine. Our current position requires

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us to get serious about growing our state. Please join me in this effort.

I will put forth bills this session to support investment in Maine and the development of our workforce. We have spent seven years fixing Maine's balance sheet. Now is the time to make investments in our economy and for the Maine people.

Our bond sales have not focused on commercialization. I support a commercialization bond. Maine has always supported research-and-development bonds, hoping it would create jobs. Although R&D is critical, it is not enough to bring an innovative idea to market.

Developing a patent that sits on a shelf is not a good return on investment for our taxpayers. We must focus on commercialization.

Our innovators create a vast array of products in many industries: bio-tech; high-tech; forest products; manufacturing; aquaculture; agriculture. We must invest in commercialization as we do in research.

Let's get our products to market. Let's offer excellent careers at high wages for our people. Let's attract newcomers to our state.

If our state is to survive and prosper, we need to grow our workforce and keep our economy growing. Record numbers of baby boomers are entering retirement. Employers need to replace these skilled workers. For our economy to continue to grow, we must attract and retain young people.

Not only will these young people work in our industries, but they will also buy homes, pay taxes, invigorate our communities and, yes, have children.

We can invest in our young people by relieving some of the burden of student debt for those who want to stay in Maine or choose to relocate here and start their professional careers.

High student-loan payments prevent our young people from buying a house or a car or spending their money at local businesses. Many take higher-paying jobs out of state to survive. They simply cannot afford to live in Maine.

We cannot continue to sit by while our employers have vacant positions that young people could fill. I will be submitting legislation again to create and fund initiatives that make these strategic investments.

My initiative—the Maine Student Loan Debt Relief Program—calls for a \$50 million bond to fund zero-interest student loans to keep Maine kids in school attending Maine colleges and universities.

It also calls for a new, low-interest refinancing program to encourage graduates from outside Maine to work in our great state.

In addition, I am asking the Legislature to simplify and increase the Opportunity Maine tax credit so employers can attract and retain the young workforce we need. The return on these investments will pay enormous dividends by encouraging young people to come here and help to reverse our declining population.

Good-paying jobs attract workers. To attract manufacturing jobs, more than half the states—28—have passed Right to Work legislation.

Kentucky became a Right to Work state in 2017. It has already proven to be a major catalyst for growth. Kentucky shattered its annual economic investment record in 2017, reaching \$9.2 billion—nearly doubling its previous record of \$5.1 billion.

Mainers are missing out on these opportunities. I urge you to have a serious debate on Right to Work.

FISCAL RESPONSIBILITY

Despite our challenges, we have made state government more efficient and more accountable. We lowered the tax burden on hard-working Mainers. We cut the pension-fund deficit by nearly half. We paid off the hospital debt. We reformed welfare.

People say they want government to run like a business—until it does. Now we must make sure our progress is not hijacked by big-money, out-of-state liberals who continue to use our broken referendum process as a means of implementing their social-engineering agenda.

The will of the people is the constitution of our state—a representative republic. But if we want to govern

through referendum, we do not need a Legislature. However, as we have seen, governing through referendum has been very destructive to many true democracies.

It took a shutdown of state government to prevent the most damaging of the 2016 referenda from taking effect.

I will fight just as hard this year to make sure we keep moving forward. There is nothing wrong with Maine people realizing a bit of prosperity.

I am pleased to report that the state of our financial house is good. In fact, it is in better shape than any time in the past 40 years. Our economy is strong. Unemployment is at 3 percent—down from 8 percent in 2011, and lower than the national and New England averages.

And the number that some call the "real" unemployment rate, which includes people working part-time or those no longer even looking for work, has fallen to Maine's lowest-level ever.

The number of jobs in our private sector is at an all-time high. Unfortunately, our problem is we have more deaths than births. That is why we must continue to be fiscally responsible. We must enact policies to attract young people, not chase them away.

Our good fiscal health is the result of making tough decisions and taking bold action—like using the liquor bond to pay off our hospital debt.

We have had a positive General Fund cash position for the past three fiscal years. We project this fiscal year's General Fund ending cash will remain positive. But we cannot pat ourselves on the back and say we have done enough. The job is not done.

Before I took office, Augusta used the Budget Stabilization Fund as their own personal slush fund. It damaged our credit rating and put the state at risk during financial emergencies. We've built this rainy-day fund to over \$200 million—an amount greater than the average of the funds of all New England states.

We promised to bring fiscal sanity to Augusta, and we did it.

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The credit rating agencies have improved our credit rating. It is less expensive now for us to borrow money to improve our roads and bridges and to fund other essential capital projects.

We should strive to become a Triple-A-rated credit risk. Increasing the fund to \$300 million would help us achieve this goal. We must keep moving forward.

We have right-sized the state's workforce, making it more efficient and more accountable. Former administrations balanced the budget on the backs of our state workers. I promised not to do that—and I didn't. We eliminated the furlough days; we restored merit pay increases; and we provided cost-of-living increases, which will total 6 percent this biennium.

We told the state employees that if they like their union, they can keep their union. But we also told them that if they didn't want to join the union, they didn't have to, and we let them keep their wages instead of paying fees to subsidize a political agenda. And many have!

WE MUST CONTINUE OUR PROGRESS

We need legislators who will pass laws that make sense and help Maine families—not politicians looking for feel-good headlines.

We have made great progress implementing reforms that have brought greater prosperity and created jobs. Just today, the North Carolina-based company LignaTerra announced it will build a new, cross-laminated timber facility at the former Great Northern Paper site in Millinocket.

We've been working with the company the last few months, and we are pleased that it will invest \$28 million and eventually create 120 new, good-paying jobs. Welcome to Maine, LignaTerra! Your investment is welcomed and appreciated.

My administration has eliminated red tape, created charter schools, cut taxes, improved our infrastructure, created new trade relationships, and reformed health insurance to lower costs—to name just a few reforms. Reforming government is hard work, but it is the right thing to do for our people.

I thank Representative Ken Fredette, Representative Ellie Espling, Representative Jeff Timberlake,

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Representative Heather Sirocki, Representative John Martin, and Representative Craig Hickman, as well as Senator Rob Whitemore, Senator Lisa Kiem, Senator Eric Brakey, and Senator Troy Jackson for working with me.

This is an election year, and this year's vote will be especially important. Mainers get the government they vote for. So I urge the Maine people to think carefully before going to the polls.

Think long and hard who you will send to the Legislature and to the Blaine House.

You will be voting to either protect Maine's fiscal health or to let politicians run it back into the ground.

You will be voting on whether to keep our taxes low and to maintain the right size of government or to let special interests and public-sector unions raise taxes and bloat government for their socialist agenda.

You will be voting on whether to respect our young adults or exploit our youth and chase them out of the state. You will vote on whether to keep growing our economy or to stifle it.

You will also be voting to continue our significant progress on welfare reform. Our policies now protect our most vulnerable while encouraging those on welfare to look for work, if they are able. We are offering people a hand up, not a hand out.

You will be voting on whether to continue these common-sense welfare reforms or whether to return to the days of out-of-control welfare entitlements that almost bankrupted the state.

In my Inaugural address, I made a pledge to the Maine People, "to put you before politics: The parents trying to make a better life for their kids; The retirees trying to hold onto their homes on a fixed income; The college graduate trying to find a good-paying job; The entrepreneurs with the courage to take a chance on an idea; and The taxpayers tired of footing the bill for a bloated establishment in Augusta.

It is time to make state government accountable. It is time to deliver value. It is time to put Mainers first."

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Those were the promises I made, and those are the promises I have kept. I promise to continue to fight for you until 11:59 a.m. on Inauguration Day.

To all the hard-working Maine taxpayers out there, it has been the biggest privilege of my life to work on your behalf as your Governor.

As a homeless kid living on the streets of Lewiston, I never imagined I would one day make it to the Blaine House. You are in my thoughts and prayers every minute of every day. Your prosperity is paramount for Maine's success.

I fought for you every day, and it has not been easy. But I would not have had it any other way. Thank you for letting me serve you and our great state.

I leave you with this quote President Reagan attributed to Abraham Lincoln:

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"You cannot help the poor by destroying the rich. You cannot strengthen the weak by weakening the strong. You cannot bring about prosperity by discouraging thrift. You cannot lift the wage earner up by pulling the wage payer down. You cannot further the brotherhood of man by inciting class hatred. You cannot build character and courage by taking away people's initiative and independence. You cannot help people permanently by doing for them, what they could and should do for themselves."

God Bless the great State of Maine and God Bless America!

We still have much to do—let's get to work.

Paul R. LePage
Governor

**STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE LEIGH INGALLS SAUFLEY
FEBRUARY 27, 2018**

Good morning, President Thibodeau, Speaker Gideon, Members of the 128th Maine Legislature, and guests.

Thank you for the honor of this invitation to address you today on the State of the Judiciary.

I know that you face a tremendous amount of work to complete in this short session, and I greatly appreciate your courtesy in sharing your time in order to receive input from the Judicial Branch.

INTRODUCTIONS

Before I begin, I would like to recognize a few people in the gallery, and I will ask that you hold your applause until they are all standing.

First, you will see my handsome husband Bill Saufley and my parents Jan & Dick Ingalls, three of the most amazing people on the planet.

Next, Ted Glessner, our extraordinary State Court Administrator, Chief Judge Eric Mehnert from the Penobscot Tribal Courts, and Judge William Blaisdell, President of the Probate Judges' Assembly. Thank you all for being here today.

Next, I will introduce my colleagues.

As always, I am going to ask them to stand, and remain standing.

Again, I'll ask you to hold your applause until the end,

From the Supreme Court—Justices:

Don Alexander, Andrew Mead, Ellen Gorman,
Joe Jabar, Jeff Hjelm, and Tom Humphrey

And the Trial Court Chiefs:

Chief Justice Roland Cole,
Deputy Chief Justice Bob Mullen,

Chief Judge Susan Oram, and
Deputy Chief Judge Susan Sparaco

I am grateful for the personal commitment and wisdom of these judicial leaders, as well as the Judges and Magistrates throughout the State who work so hard

every day to help Maine people resolve disputes, seek redress for injuries, find safety in chaos, and most importantly—find justice.

I am pleased to tell you that the foundation of Maine's Judiciary is solid, but we are facing several serious challenges.

I will focus on three key areas:

1. The Infrastructure of the Judicial Branch

First, regarding the infrastructure of the Judicial Branch, there is much good news.

2. The Upcoming Transition to Digital Records

Second, I will update you on the court's exciting transition to digital records. Along with this really good news come several challenges, and I will give you an update on one of the most critical challenges.

3. The Opioid Addiction Crisis

And third, the opioid addiction crisis is not going away. We must improve our response to this crisis, and I will give you a proposal for doing just that in the courts.

INFRASTRUCTURE

Let's talk first about the Infrastructure of the Judicial Branch.

For going on two decades, we have been working with Legislators and Governors to address 3 serious problems with the court's infrastructure.

Safety First. Improvement in courthouse safety has been substantial, although it is not yet complete. Every courthouse has entry screening equipment, and the Judicial Marshals, well-trained and very good at diffusing difficult situations, are able to provide entry screening on approximately 70% of the court days.

During routine entry screening, Marshals intercept many potential weapons. Still, it is alarming that, on 6 separate occasions in 2017 alone, the Marshals prevented **firearms** from getting into Maine's courtrooms.

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We need to reach 100% entry screening, and we will provide the 129th Legislature with the plan to get there.

Aging Facilities. Maine's courthouses have been badly in need of renovations and updating, and we are well on our way. Over the last 17 years, with your support, and with the support of every Maine Governor, many of our centuries-old buildings have been renovated or replaced.

If you get a chance, take a tour of one of those courthouses. The newly renovated courthouse in Machias is a terrific example of melding beautiful old architecture with modernized access and capacity.

Another example is the new courthouse that is right now being built for the people of Waldo County. Just a year from now, the public there will find access to justice in a single, consolidated court building that has enough courtrooms, is thoroughly handicap accessible, has ample on-site parking, and is located right in downtown Belfast.

Over the next several years, projects in Oxford and York Counties will provide those communities with much improved access to justice.

Improved Recruitment & Retention of Judicial Branch Staff. We have also improved the retention and recruitment of excellent court staff. As you have heard me say regularly, the Judicial Branch is made up of buildings and people. Those people—518 hard-working folks who cover the entire State—comprise only 4% of the total number of State employees.

71 of the 518 court employees are judicial officers—judges and magistrates.

But the vast majority of Judicial Branch employees are clerks and marshals. They are the people who greet and help members of the public on some of the worst days of their lives, and for too many years we did not compensate those employees in a way that respected the detailed, challenging, and patient work that they must do, day in and day out.

During the recession that affected everyone ten years ago, state employee salaries were frozen at 2008 levels for several years. As the recession ended, we struggled to retain good employees, and we experienced difficulty recruiting, due to those uncompetitive salaries.

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I want to publicly thank you, the 128th Maine Legislature, and recognize, especially, the Judiciary and Appropriations Committees for responding last session to our request for support for those employees, and for addressing that critical need.

With your support, for the first time in many years the Judicial Branch is fully staffed thanks to competitive salaries that help us retain and attract the best employees—often unsung heroes—who serve the justice needs of Maine people.

Process Improvement. With the infrastructure of the court system improving all the time, we have been able to turn our energies and attention to some of the more complex justice needs.

Criminal Process Improvement. The criminal process changes that the Trial Court Chiefs and the trial judges across the State have worked so hard to implement have resulted in substantial improvements.

- Most criminal charges in Maine are now resolved in less than 9 months.
- Recently, Maine Sheriffs have responded helpfully to the changes you enacted, requiring that they provide the courts with bi-monthly updates identifying their jail populations. This improvement represents a simple but very effective method of assisting the judges as they work to address priority cases first. (30-A M.R.S. § 1662(3))
- Regional meetings are underway between the Bench and Bar to create further efficiencies that will help the Maine Commission on Indigent Legal Services better serve the public.
- An improved process for notification and review of unpaid fines has helped people follow through on their responsibilities, while avoiding the disruption of arrest warrants.

Civil Process Improvement. In civil cases, Maine has taken the lead in New England on improving civil process to allow individuals and businesses to obtain meaningful remedies less expensively and in a shorter time frame.

- Many improvements will be rolled out over the next year.
- At the same time, the very successful Business and Consumer Docket continues to resolve, in an average of 10 months, complex,

multi-party business cases that would formerly have taken years to complete

Family Law Improvements. In the areas of Family and Probate Law, we must all be grateful to the Probate and Trust Law Advisory Commission, which has drafted a comprehensive update to Title 18-A, the Probate Code.

Even more impressive has been the consistent and detailed work of the Joint Standing Committee on the Judiciary on this project. That Committee, led by Senator Lisa Keim and Representative Matt Moonen, has undertaken a careful, section-by-section review of the entire Probate Code revision. The people of this State can be very proud of the attention to detail and commitment to excellence that these legislators have demonstrated.

I also want to thank the Family Law Advisory Commission, led by Justice Wayne Douglas, as well as Professor Deirdre Smith of the University of Maine School of Law for their important work integrating family law improvements into the Probate Code, reducing the confusing patchwork of laws that has made resolution of family disputes difficult for the public.

And a very heartfelt THANKS is in order for your own Legislative Analyst—Peggy Reinsch, whose clarity of reporting and organizational talent has been a great assistance with this complex project. Peggy is another of the unsung heroes in State Government, and I will ask her to **stand and accept our thanks**.

High Schools. Moving to appellate law, as you know, the Supreme Judicial Court travels every year to high schools around the state to hold oral arguments in real cases. As of last spring, we have traveled to 38 high schools throughout the State.

Last year, at the invitation of Senator Mason and Speaker Gideon, and Senator Keim, we traveled to Freeport High and then to Mountain Valley High Schools. Our scheduled trip to Westbrook at the invitation of Representative Gattine sadly had to be cancelled as a result of a tragedy. We hope to get to Westbrook this fall and then Wells at the invitation of Representative Foley and Senator Collins, with a trip to Sanford in the spring with Representative Mastraccio, where, I understand, we will be breaking in their brand-new auditorium!

These high school oral arguments provide a wonderful opportunity for us to get out of the courthouses; meet students, teachers, and education leaders across the State; and see the results of your effective advocacy in your own communities.

UPDATES

Just a couple of quick updates regarding the Legal Profession:

Rural Access to Justice

I am grateful to the Joint Standing Committee on Taxation, which has given its approval to a bill sponsored by Representative Bailey that will provide tax incentives for lawyers who move to underserved areas of Maine to help expand access to justice. The cost is very small, and I hope you will all give it your support.

Sexual Harassment in the Legal Profession

This year, the legal profession in Maine—lawyers and judges—will be undertaking a searching analysis of the potential that sexual harassment exists within the profession. In a profession that is founded upon concepts of justice and fairness, there is no room for harassment, bullying, or bias, and we will all be working together on these concerns.

TECHNOLOGY, ACCESS, AND PRIVACY

I turn now to the exciting progress in the development of digital court records.

As you know, working with Tyler Technologies, we are in the process of deploying a modern digital case management system.

I am very pleased to report that, this fall, the first component of the new system will “go-live” in the Violations Bureau, the court’s statewide system for processing traffic infractions.

Every year, nearly 100,000 new traffic tickets are filed in the Violations Bureau. In years past, members of the public have had to wait for the antiquated system to catch up before they could pay their fines or correct their records. That can take days and sometimes weeks.

The new system will be much more efficient and accessible for the public. In the following year, eTicketing and the connection to the Secretary of State’s Office will augment the system so that information will

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be smoothly available across the systems to anyone with a traffic ticket problem and licenses can be quickly reinstated.

In the fall of 2019, we will go-live with all case types in Penobscot and Piscataquis Counties—which seems fitting—because the initial proponent of the electronic case management system way back in 2010 was a freshman lawyer-legislator from Newport, in Penobscot County. Now I am not naming any names this year, because it seems like half of you are running for Governor!

Privacy and Transparency

But implementing the new case management system brings us to one of the significant challenges we must address:

how to balance the public's right to governmental transparency with the personal privacy concerns raised by the advancements in technology.

- In recent years, we have all seen news reports about identity theft and other cyber security concerns.
- For obvious reasons, domestic violence advocates have recommended strong privacy protection for digital court records.
- Nationally, privacy experts are raising concerns about access to personal, private information through internet-based searches of newly digitized court records.

This is no less a challenge for the Maine courts.

- Social Security numbers and detailed information describing financial assets are required to be disclosed in many court matters, especially those involving families, divorce, and child support.
- Extremely personal medical and mental health information is required to be filed in medical malpractice cases, family matters, and personal injury cases.
- Dates of birth are a critical part of correctly identifying a defendant in a criminal case, especially when the defendant's last name is a common last name like Smith, Jones, or . . . Martin.

As we shift from paper records to digital records, the ease of public access to court records, including internet access and data broker access, raises concerns

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about identity theft, safety, and protection of personal privacy.

Make no mistake, however, most court records have historically been publicly available, and must remain accessible. Public confidence in the justice system is at stake.

The public's right to know what its government is doing must be respected.

But we must be careful not to confuse the public's right to know what its government is doing with an unlimited right to obtain private information about individuals, simply because those individuals must interact with the government.

This challenge requires a very careful response.

So last year, the Supreme Judicial Court formed a Task Force made up of representatives of many groups who use the court: juvenile justice, low income, and family representatives; domestic and sexual violence victims' advocates; privacy experts; the ACLU; and the media, among others.

The Task Force studied the practices and experiences of other courts, reviewed Maine statutes and rules of law, analyzed developing jurisprudence, and considered the opinions of experts on these issues.

It presented its report to the Court in the fall of 2017. I am personally grateful to the Task Force members who spent so many hours studying these important issues and making recommendations, and we send them our gratitude.

Once the report was received, we sought written comments and recommendations from the public. We have received a great deal of written input.

The report and all of the comments are available on the Court's public website.

We are reviewing the comments, and we will hold a public hearing for further input later this spring.

Many decisions are yet to be made, and there will be multiple opportunities for input and discussion.

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In the meantime, however, I want to be clear about several items that seem to have generated confusion.

First and foremost, the new system will provide litigants with internet access to their own files. It will not be necessary for a party to have an attorney in order to have digital on-line access. Indeed, parties will be able to log in and access their court files 24/7 from anywhere in the world where the internet is available.

And a huge amount of information will be newly available to the public in nonconfidential cases, including judicial decisions and actions, docket entries, schedules, and calendars.

Currently, none of that information is available on line. This new system will dramatically expand litigant and public access to court records.

But there are challenging decisions ahead.

Ultimately, the Task Force recommended that new rules and statutes be developed very carefully and reviewed regularly.

There is much wisdom in that recommendation. The consequences of these decisions will affect the public in ways we may not yet anticipate.

I will be seeking your input next year, and I look forward to a robust conversation with all of the stakeholders.

OPIOID CRISIS

I move now to a topic that cannot wait—the Opioid Addiction Crisis.

My focus is necessarily on the ways that the courts can address the challenges, but the crisis is affecting every aspect of life in Maine and across the country.

The statistics gathered by the Attorney General's Office, the Department of Public Safety, the Department of Health and Human Services, and national organizations tell a heartbreaking story.

This crisis affects our families:

- For context, in 2011, 522 child protection petitions were filed by the Department of Health and Human Services in Maine courts.

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- By 2015 that number had almost doubled, rising to 1002 petitions, and in 2017 there were 937 new petitions filed.
- In Federal Fiscal Year 2016, Maine ranked **sixth** in the nation for cases in which drug or alcohol use was indicated as a contributing factor for the removal of children from their parents—55% of the cases, and that rose to 60% last year.
- In 2017, 14,000 Mainers between the ages of 16 and 24 were neither in school nor working.

It affects our criminal justice system:

- The Department of Public Safety and the DEA in Maine report that they intercepted literally *millions* of doses of heroin and fentanyl in 2017.
- Notwithstanding those interceptions, and even though criminal case filings continue to drop slightly each year, judges, prosecutors, and the defense bar all report that the amount of substance abuse and mental illness involved in criminal charges is expanding every year.
- Drug Courts are helping, but the numbers are small.
 - In 2017, 254 people participated in Adult Drug Courts.
 - 51 people in 2017 successfully graduated from a Drug Court.
 - And the most recent evaluation of the Adult Drug Courts, from a Report in 2016, indicated a recidivism rate of 16%. That's a very hopeful statistic.
 - But the Drug Courts do not currently reach enough people, and the success rates remain challenging.
 - Of the 254 people participating in Drug Courts last year, 45 defendants, almost 20%, had to be terminated from the program before the year was over, and
 - By the end of 2017, there were only 142 active Drug Court participants. There were 19 defendants in the Co-Occurring Disorders Court, and 12 in the Veterans Court.

But the crisis is affecting our communities in much larger numbers:

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- The Attorney General reports that, in 2017, there were 418 drug-induced deaths in Maine. That is an 11% increase over 2016.
- Although 12% of the deaths were understood to be suicides, 87% were accidental overdose deaths.
- The same report indicates that 85% of the 418 deaths were caused by at least one opioid, with fentanyl causing 58% of the deaths from overdose.
- On average, one person dies every 21 hours from a drug overdose in Maine.
- Overdose fatalities have now far outstripped traffic fatalities.
- In 2017, 2,503 doses of Narcan were administered by EMTs in Maine.
- And 952 drug-affected babies were born in Maine.

OK, enough of the numbers.
They can become mind-numbing and depersonalizing.

The stark reality is:
People are dying; families are hurting; communities feel helpless.

We know that we are not alone—this is happening in many other states.

But we should not sugar-coat it. What we—in government—are doing

IS NOT ENOUGH.

We have to try harder.

We need to match our own sense of urgency with rapid access to treatment and seriously comprehensive follow-up.

Today, for court-based responses, I recommend a two-fold approach:

First, we must expand the number of communities where fully resourced Drug Court and Veterans Programs are available.

And second, we should create an alternative to traditional Drug Courts to determine whether an expanded, comprehensive approach will be more successful.

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I am therefore recommending a pilot project for a full Wrap-Around Drug Court.

This would be a first-of-its-kind in Maine project. It would include immediate and extensive access to addiction treatment, mental health treatment, comprehensive case management, testing, sober housing, job training, employment assistance, transportation, family-related services, and long-term follow-up.

If we are able to fund this project, it must include thorough evaluations and rigorous application of nationally recognized best practices.

Fairly quickly, we will learn whether a more comprehensive approach to addiction recovery yields better outcomes.

It will not be inexpensive, but the long-term consequences of failing to find an answer to this crisis are beyond measuring.

Governor LePage has given his preliminary support for the Wrap-Around Drug Court pilot project, and I hope that you will all work together to find the funding to move us in the right direction.

To be clear, no statutory changes are needed to accomplish either of these goals, and the Judicial Branch does not need additional funding to expand Drug Courts or manage a new wrap-around pilot project.

As long as all of the trial court judicial positions are filled, the Judicial Branch has sufficient resources. And Justice Nancy Mills, the Chair of the Drug Court Steering Committee, stands ready to provide oversight and management for any expansions or innovations in the Drug Courts.

However, significant resources *are* needed in the communities for treatment, case management, testing, and all of the needed services.

That is where your focus and funding efforts should go.

Please—help us expand our response to this heart-breaking crisis.

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Preventive Medicine

Finally, I ask you to bear with me as I make a public service announcement.

I think many of you are aware that last summer I was diagnosed with breast cancer.

It was a complete shock: I am a sturdy Scottish lass, and I don't get sick.

The good news was that we had caught it early, in an annual test, with the new 3-D technology. Without that test, I would not have known it was there.

Within several months, I had completed the surgeries and radiation, and I was out the other side. Fortunately, I was able to work through most of the treatment. All of that was because we caught it early.

So why am I telling you about my adventures in medicine? For two reasons.

One, to say thank you to every one of you, as well as Governor LePage.

So many of you reached out in support and encouragement. I learned that many of you, or your family members, have been through much worse, and the courage and grace in this State are amazing.

My colleagues were absolutely wonderful.

And I want to say a public thank you to my incredible husband who kept me laughing through the whole process, and to my parents who were constantly at my side when I needed them.

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But the major reason I raise this issue today is this—

I want to encourage every woman over 40 to get your annual mammogram done. If you haven't already done so, schedule it today.

The insurance for Maine State employees completely covers the cost, and for those who do not have that coverage, there are many programs that will help or substantially defray those costs.

Schedule it now. Your family will thank you, and you will be able to continue to be an important part of this wonderful world.

Get your mammograms done—really, I mean it.

Don't make me enter an Order. Just do it.

Finally, I want to thank all of you for being part of Government.

These are tough times for governing. But really wonderful people continue to put in the work to be a meaningful part of our self-governing society.

And without your persistence, patience, and willingness to do the hard work, democracy could not survive.

Thank you for your dedication to our shared mission to improve access to justice and, with it, the strength of our democracy.

CROSS REFERENCE TABLES

TABLE I

Sections of the Maine Revised Statutes affected by the laws of the First Special Session and Second Regular Session of the 128th Legislature and the Revisor's Report 2017, Chapter 1 and Initiated Bill 2017, Chapter 1.

TITLE	SECTION	SUB	PARA	EFF	CHAPTER	PART	SEC	TITLE	SECTION	SUB	PARA	EFF	CHAPTER	PART	SEC
1	125			AMD	PL 407	A	1	5	13056-E	1		COR	RR	1	3
1	433	2-A	D	AFF	PL 402	F	1	5	13063	5		AMD	PL 322		1
1	433	2-A	D	AMD	PL 402	C	1	5	17001	13	B	AMD	PL 392		1
								5	17001	13	B-1	NEW	PL 392		2
3	704			AFF	PL 402	F	1	5	17055	1		AFF	PL 402	F	1
3	704			AMD	PL 402	C	2	5	17055	1		AMD	PL 402	C	14
3	959	1	F	AMD	PL 409	E	1	5	17055	2		AFF	PL 402	F	1
3	959	1	M	AMD	PL 409	E	1	5	17055	2		AMD	PL 402	C	14
3	959	1	P	AMD	PL 408		1	5	17924	3		NEW	PL 384		1
								5	17953	4	B	AFF	PL 402	F	1
4	152	5-A		AFF	PL 402	F	1	5	17953	4	B	AMD	PL 402	C	15
4	152	5-A		AMD	PL 402	C	3	5	18101			NEW	PL 378		1
4	171-A	2		AMD	PL 329		1	5	18252	6		AMD	PL 392		3
4	253			AFF	PL 402	F	1	5	18302	3		NEW	PL 392		4
4	253			AMD	PL 402	C	4	5	18356	4		NEW	PL 392		5
4	421			AMD	PL 407	A	2	5	18407	7		RPR	PL 392		6
4	422	2		AMD	PL 407	A	3	5	18407	8		RP	PL 392		7
4	423			AMD	PL 407	A	4	5	18452	3		AMD	PL 392		8
4	807	3	I	AFF	PL 402	F	1	5	18457-A			NEW	PL 392		9
4	807	3	I	AMD	PL 402	C	5	5	18524	3		NEW	PL 384		2
4	807	3	S	AFF	PL 402	F	1	5	18553	4	B	AFF	PL 402	F	1
4	807	3	S	AMD	PL 402	C	6	5	18553	4	B	AMD	PL 402	C	16
4	1204			AFF	PL 402	F	1	5	18701			NEW	PL 378		2
4	1204			AMD	PL 402	C	7	5	18801		1st	AMD	PL 392		10
4	1551	2		AFF	PL 402	F	1	5	18801	3		AMD	PL 392		11
4	1551	2		AMD	PL 402	C	8	5	18804	7		NEW	PL 392		12
4	1551	3		AFF	PL 402	F	1	5	19202	2-B	A	AMD	PL 407	A	9
4	1551	3		AMD	PL 402	C	9	5	19507	4	D	AFF	PL 402	F	1
4	1554	1		AFF	PL 402	F	1	5	19507	4	D	AMD	PL 402	C	17
4	1554	1		AMD	PL 402	C	10	5	20001			AMD	PL 407	A	10
4	1555	1		AFF	PL 402	F	1	5	20002	1		AMD	PL 407	A	11
4	1555	1		AMD	PL 402	C	11	5	20002	2		AMD	PL 407	A	12
4	1557	1		AFF	PL 402	F	1	5	20003	1		RP	PL 407	A	13
4	1557	1		AMD	PL 402	C	12	5	20003	3-A		AMD	PL 407	A	14
								5	20003	4		AMD	PL 407	A	15
5	156			NEW	PL 394		1	5	20003	9		RP	PL 407	A	16
5	957	1		AMD	PL 407	A	5	5	20003	10		AMD	PL 407	A	17
5	1642	6		AMD	PL 407	A	6	5	20003	11		RP	PL 407	A	18
5	3360-C	2	B	AMD	PL 348		1	5	20003	12		RP	PL 407	A	19
5	4701	1	C	AMD	PL 416		1	5	20003	17-A		NEW	PL 407	A	20
5	12004-G	13-C		AMD	PL 407	A	7	5	20003	18		AMD	PL 407	A	21
5	12004-G	15-A		AMD	PL 407	A	8	5	20003	21		RP	PL 407	A	22
5	12004-G	30-C		AMD	PL 408		2	5	20003	21-A		NEW	PL 407	A	23
5	12004-H	14		AMD	PL 368		1	5	20003	22		AMD	PL 407	A	24
5	12004-I	52-C		NEW	PL 409	A	1	5	20005			AMD	PL 407	A	25
5	12004-I	73-B		AFF	PL 402	F	1	5	20005-A		1st	AMD	PL 407	A	26
5	12004-I	73-B		AMD	PL 402	C	13	5	20005-A	2		AMD	PL 407	A	27
5	13056-D	3	D	COR	RR	1	1	5	20006-A	1		AMD	PL 407	A	28
5	13056-D	7		COR	RR	1	2	5	20006-A	2		AMD	PL 407	A	29

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TITLE	SECTION	SUB	PARA	EFF	CHAPTER	PART	SEC	TITLE	SECTION	SUB	PARA	EFF	CHAPTER	PART	SEC
5	20007				AMD PL 407	A	30	8	263-A	6			NEW PL 371		1
5	20008				AMD PL 407	A	31	8	263-A	7			NEW PL 371		1
5	20009				AMD PL 407	A	32	8	267	2			AMD PL 371		2
5	20021				AMD PL 407	A	33	8	285				RP PL 371		3
5	20022				AMD PL 407	A	34	8	291				AMD PL 371		4
5	20023		1st		AMD PL 407	A	35	8	299-A				NEW PL 371		5
5	20041				AMD PL 407	A	36	8	1001	11			AMD PL 407	A	47
5	20043				AMD PL 407	A	37	8	1001	12			AMD PL 407	A	47
5	20044				AMD PL 407	A	38	8	1001	13			RP PL 407	A	48
5	20047		2		AMD PL 407	A	39	8	1016	2	E		AMD PL 407	A	49
5	20051		1		AMD PL 407	A	40	8	1037		1st		AMD PL 371		6
5	20054				NEW PL 415		1								
5	20065		1		AMD PL 407	A	41	9-B	427	2	C	AFF	PL 402	F	1
5	20065		2		AMD PL 407	A	42	9-B	427	2	C	AMD	PL 402	C	18
5	20065		3		AMD PL 407	A	43	9-B	427	4	A	AFF	PL 402	F	1
5	20067				AMD PL 407	A	44	9-B	427	4	A	AMD	PL 402	C	19
5	20074				AMD PL 407	A	45	9-B	427	4	B	AFF	PL 402	F	1
5	20078-A		1		AMD PL 407	A	46	9-B	427	4	B	AMD	PL 402	C	20
								9-B	427	8	B	AFF	PL 402	F	1
								9-B	427	8	B	AMD	PL 402	C	21
7	1-C				RP PL 409	A	2	9-B	427	10		AFF	PL 402	F	1
7	281				NEW PL 314		1	9-B	427	10		AMD	PL 402	C	22
7	282				NEW PL 314		1	9-B	427	10		AMD	PL 390		1
7	283				NEW PL 314		1	9-B	427	13		AFF	PL 402	F	1
7	284				NEW PL 314		1	9-B	427	13		AMD	PL 402	C	23
7	285				NEW PL 314		1	9-B	427	13		AFF	PL 402	F	1
7	286				NEW PL 314		1	9-B	473	2	C	AFF	PL 402	F	1
7	2441				RP PL 409	A	3	9-B	473	2	C	AMD	PL 402	C	24
7	2442				RP PL 409	A	3	9-B	476	1	D	AFF	PL 402	F	1
7	2444				RP PL 409	A	3	9-B	476	1	D	AMD	PL 402	C	25
7	2445				RP PL 409	A	3								
7	2446				RP PL 409	A	3	10	8003-B	2-A			AMD PL 407	A	50
7	2447				RP PL 409	A	3								
7	2448				RP PL 409	A	3	12	1839	1	E	AMD	PL 362		1
7	2449				RP PL 409	A	3	12	1839	1	F	AMD	PL 362		2
7	2450				RP PL 409	A	3	12	1839	1	G	NEW	PL 362		3
7	2451				RP PL 409	A	3	12	1853	1	H	AMD	PL 362		4
7	2452				RP PL 409	A	3	12	1853	1	I	AMD	PL 362		5
7	2453				RP PL 409	A	3	12	1853	1	J	NEW	PL 362		6
7	2454				RP PL 409	A	3	12	6087	2	A	COR RR	1		4
7	2455				RP PL 409	A	3	12	6371	4	I	COR RR	1		5
7	3907		8-B		NEW PL 404		1	12	6421	7-B	A	AMD	PL 320		1
7	3907		12-D		RPR PL 404		2	12	6421	7-C	B	AMD	PL 320		2
7	3907		20-A		NEW PL 404		3	12	6421	7-C	C	AMD	PL 320		2
7	3907		24-B		NEW PL 404		4	12	6421	7-C	D	AMD	PL 320		2
7	3922		5		AMD PL 404		5	12	6421	7-C	E	AMD	PL 320		2
7	3923-A		5		NEW PL 404		6	12	6450	1		AMD	PL 352		1
7	3925				NEW PL 404		7	12	6450	2		NEW	PL 352		2
7	3942			1st	AMD PL 404		8	12	6450	3		NEW	PL 352		2
7	3947			1st	AMD PL 404		9	12	6455	2-B		NEW	PL 368		2
7	3948		4		NEW PL 404		10	12	6455	5-A	D	AMD	PL 368		3
7	3952				RP PL 404		11	12	6455	8		RP	PL 368		4
7	3952-A				NEW PL 404		12	12	6455	9		NEW	PL 368		5
7	3954				NEW PL 404		13	12	6455		last	RP	PL 368		6
								12	6671	3	A	AMD	PL 350		1
								12	6671		last	NEW	PL 350		2
7-A	101		2-A		RP PL 314		2	12	6749-Q	3		RP	PL 320		3
7-A	101		2-B		AFF PL 314		7	12	6749-Q		last	AMD	PL 320		4
7-A	201-A				RP PL 314		4	12	6804	2		AMD	PL 346		1
7-A	201-B				AFF PL 314		7	12	6804	2-A		NEW	PL 346		2
7-A	201-B				RP PL 314		5	12	10902	7-C	B	AMD	PL 355		1

CROSS REFERENCE TABLE I

TITLE	SECTION	SUB	PARA	EFF	CHAPTER	PART	SEC	TITLE	SECTION	SUB	PARA	EFF	CHAPTER	PART	SEC
12	11110			AMD	PL 379		1	17-A	1107-A	2		AMD	PL 409	B	5
12	11161	2		AMD	PL 366		1	17-A	1111-A	1		AMD	PL 409	B	6
12	11251			AMD	PL 357		1	17-A	1111-A	4-A		AMD	PL 409	B	7
12	11401	1	E	AMD	PL 356		1	17-A	1111-A	4-B		AMD	PL 409	B	7
12	11403	2	B	AMD	PL 357		2	17-A	1114			AMD	PL 409	B	8
12	12708	1	B	AMD	PL 325		1	17-A	1115			AMD	PL 409	B	9
12	12708	1	B	AFF	PL 403	A	4	17-A	1117	4		AMD	PL 409	B	10
12	12708	1	B	AMD	PL 403	A	1	17-A	1175			AMD	PL 386		1
								17-A	1204	2-A	I	AMD	PL 407	A	55
13	732	5		AFF	PL 402	F	1	17-A	1251			RPR	PL 374		1
13	732	5		AMD	PL 402	C	26	17-A	1252	4-A		AMD	PL 336		1
13	732	6		AFF	PL 402	F	1								
13	732	6		AMD	PL 402	C	27	18	4163-A			AFF	PL 402	F	1
13-C	1501	2	L	AFF	PL 402	F	1	18	4163-A			AMD	PL 402	C	34
13-C	1501	2	L	AMD	PL 402	C	28	18-A	ALL			AFF	PL 402	F	1
								18-A	ALL			RP	PL 402	A	1
14	164-B			NEW	PL 338		1	18-A	1-201	(33)		AMD	PL 359	B	1
14	702			AMD	PL 332		1	18-A	5-931	(a) (7)		AMD	PL 359	B	2
14	709			AMD	PL 332		2	18-A	5-931	(a) (8)		AMD	PL 359	B	2
14	1202-A			COR	RR 1		6	18-A	5-931	(a) (9)		NEW	PL 359	B	3
14	4422	13	E	COR	RR 1		7	18-A	6-105			AMD	PL 390		2
14	6030-F			COR	RR 1		8	18-A	9-308	(e)		AMD	PL 411		1
14	6303			AFF	PL 402	F	1	18-A	9-401	(d) (6)		AMD	PL 407	A	56
14	6303			AMD	PL 402	C	29	18-A	10-101			NEW	PL 359	A	1
14	8104-C			AFF	PL 402	F	1	18-A	10-102			NEW	PL 359	A	1
14	8104-C			AMD	PL 402	C	30	18-A	10-103			NEW	PL 359	A	1
								18-A	10-104			NEW	PL 359	A	1
15	56	2	C	AMD	PL 377		1	18-A	10-105			NEW	PL 359	A	1
15	321	1		AFF	PL 402	F	1	18-A	10-106			NEW	PL 359	A	1
15	321	1		AMD	PL 402	C	31	18-A	10-107			NEW	PL 359	A	1
15	1026	3	A	AMD	PL 407	A	51	18-A	10-108			NEW	PL 359	A	1
15	1026	4	C	AMD	PL 407	A	52	18-A	10-109			NEW	PL 359	A	1
15	1105			AMD	PL 407	A	53	18-A	10-110			NEW	PL 359	A	1
15	3314	1	G	AMD	PL 377		2	18-A	10-111			NEW	PL 359	A	1
15	3314	4		AMD	PL 407	A	54	18-A	10-112			NEW	PL 359	A	1
15	5821		1st	AMD	PL 409	B	1	18-A	10-113			NEW	PL 359	A	1
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16	651			AFF	PL 402	F	1	18-A	10-117			NEW	PL 359	A	1
16	651			AMD	PL 402	C	32	18-A	10-118			NEW	PL 359	A	1
17	1831	4-A		COR	RR 1		10	18-B	105	3		AMD	PL 349		1
17	1837-A	2		AMD	PL 365		1	18-B	813	6		AMD	PL 349		2
17	1837-A	3		AMD	PL 365		1								
17	1837-A	4		AMD	PL 365		1	18-C	ALL			AFF	PL 402	F	1
								18-C	ALL			NEW	PL 402	A	2
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17-A	853	3		NEW	PL 416		3	19-A	1803	2		AMD	PL 328		3
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20-A	1466	5	A		AMD PL 385		2	22	1502			AMD	PL 407	A	70
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20-A	2951	6			RPR PL 342		2	22	1711-B	3	D	AFF	PL 402	F	1
20-A	2951	7			AMD PL 342		3	22	1711-B	3	D	AMD	PL 402	C	43
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20-A	5206				AMD PL 381		4	22	1711-C	1	A	AMD	PL 402	C	44
20-A	6001-B	2	B		AMD PL 407	A	58	22	1711-C	3	D	AMD	PL 407	A	72
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20-A	6301	2			AMD PL 381		6	22	1711-G	2		AMD	PL 402	C	45
20-A	6301	3			AMD PL 381		7	22	1711-G	3		AFF	PL 402	F	1
20-A	6451				AMD PL 381		8	22	1711-G	3		AMD	PL 402	C	45
20-A	6453				AMD PL 381		9	22	1711-G	7		AFF	PL 402	F	1
20-A	6455				RP PL 381		10	22	1711-G	7		AMD	PL 402	C	45
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20-A	6605				AMD PL 407	A	60	22	1826	2	I	AFF	PL 402	F	1
20-A	6606				AMD PL 407	A	61	22	1826	2	I	AMD	PL 402	C	46
20-A	7407	6			AMD PL 413		1	22	1963	3	F	COR	RR 1		12
20-A	7407	12-B			NEW PL 413		2	22	2053	2-A		AMD	PL 407	A	74
20-A	8451	2	B		AFF PL 403	A	4	22	2353	1	D	AMD	PL 364		1
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20-A	8601-A	1			AMD PL 381		11	22	2353	2	A-1	RPR	PL 417		1
20-A	8606-A	2			AMD PL 381		12	22	2353	2	A-2	RP	PL 364		3
20-A	8613				NEW PL 381		13	22	2353	2	A-2	RP	PL 417		2
20-A	9701	1			AMD PL 407	A	62	22	2353	2	C-1	AMD	PL 364		4
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21-A	723-A	2			AMD PL 316		8	22	2495		1st	AMD	PL 322		6
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21-A	723-A	5-A			NEW PL 316		10	22	2625		3rd	COR	RR 1		14
21-A	723-A	6			AMD PL 316		11	22	2765	1	A	AFF	PL 402	F	1
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22	2843-A	9		AFF	PL 402	F	1	22	4011-B	1		AMD	PL 407	A	84
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22	2848		1st	AFF	PL 402	F	1	22	4031	1	D	AMD	PL 402	C	62
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22	3173-E			AFF	PL 402	F	1	22	4038-C	2		AMD	PL 402	C	66
22	3173-E			AMD	PL 402	C	51	22	4038-E	7	A	AFF	PL 402	F	1
22	3174-G	1	F	AMD	IB 1	A	1	22	4038-E	7	A	AMD	PL 402	C	67
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22	3174-VV		last	AMD	PL 407	A	78	22	4038-E	11	A	AMD	PL 402	D	1
22	3472	10		AFF	PL 402	F	1	22	4051			AFF	PL 402	F	1
22	3472	10		AMD	PL 402	C	52	22	4051			AMD	PL 402	C	68
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22	3473	2	C	AMD	PL 402	C	54	22	4056	1		AFF	PL 402	F	1
22	3481	2		AFF	PL 402	F	1	22	4056	1		AMD	PL 402	D	2
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22	3482			AFF	PL 402	F	1	22	4065			AFF	PL 402	F	1
22	3482			AMD	PL 402	C	56	22	4065			AMD	PL 402	C	70
22	3483	1		AFF	PL 402	F	1	22	4099-E	1		AMD	PL 407	A	86
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22	3737	4		NEW	PL 412		1	22	4171	1	A	AFF	PL 402	F	1
22	3739	2	G	AMD	PL 407	A	79	22	4171	1	A	AMD	PL 402	C	71
22	3762	3	B	AMD	PL 412		2	22	5106	2	E	AFF	PL 402	F	1
22	3762	8	E	RPR	PL 412		3	22	5106	2	E	AMD	PL 402	C	72
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22	3765			AFF	PL 402	F	1	22	7249	1-B		NEW	PL 360		4
22	3765			AMD	PL 402	C	58	22	7251	1		AMD	PL 360		5
22	3782-A	5		RPR	PL 412		4	22	7253	2		AMD	PL 360		6
22	3788	11	C	AMD	PL 407	A	81	22	7253	2-A		NEW	PL 360		7
22	3788	12	C	AMD	PL 407	A	82	22	7253	3		AMD	PL 360		8
22	3790-A			NEW	PL 387		1	22	7261	1	D	AMD	PL 407	A	88
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22	4002	9-B		AMD	PL 411		4	22	8621	6		AFF	PL 402	F	1
22	4003	2		AMD	PL 411		5	22	8621	6		AMD	PL 402	C	73
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24-A	4603	2	M	AMD	PL 382		7	26	875	1	E	AFF	PL 402	F	1
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28-B	ALL				NEW PL 409	A	6	30-A	6201	1-A			NEW PL 313		2
								30-A	6201	2			AMD PL 313		3
29-A	456	1			AMD PL 327		1	30-A	6201	3			AMD PL 313		3
29-A	456-A	1			AMD PL 327		2	30-A	6201	5			AMD PL 313		3
29-A	456-A	8			RP PL 327		3	30-A	6205		1st		AMD PL 313		4
29-A	456-B	1			AMD PL 327		4	30-A	6205		last		AMD PL 313		4
29-A	456-B	8			RP PL 327		5	30-A	6206		2nd		NEW PL 313		5
29-A	456-C	1			AMD PL 327		6	30-A	6207	2			AMD PL 313		6
29-A	456-D	1			AMD PL 327		7	30-A	6208	1	C		AMD PL 313		7
29-A	456-D	6			RP PL 327		8	30-A	6208	2			AMD PL 313		8
29-A	456-E	1			AMD PL 327		9	30-A	6209				AMD PL 313		9
29-A	456-E	8			RP PL 327		10	30-A	7063				NEW PL 409	C	4
29-A	456-G	1			AMD PL 327		11								
29-A	456-G	8			RP PL 327		12	32	64-B	1			AMD PL 407	A	122
29-A	456-H				NEW PL 400		1	32	89	2	A		AMD PL 373		1
29-A	468		1st		AMD PL 327		13	32	90-A	5	B-3		AMD PL 407	A	123
29-A	468	8			AMD PL 327		14	32	91-B	2	E		AMD PL 373		2
29-A	468	9			AMD PL 327		15	32	91-B	2	H		NEW PL 373		3
29-A	562	3			RPR PL 327		16	32	503-B	1			AMD PL 407	A	124
29-A	562	4			AMD PL 327		17	32	1202-A	4	B		COR RR 1		28
29-A	1402-A	4	E		AFF PL 402	F	1	32	1852		3rd		COR RR 1		29
29-A	1402-A	4	E		AMD PL 402	C	82	32	2212				AMD PL 407	A	125
29-A	1402-A	5			AFF PL 402	F	1	32	2258-B				AMD PL 407	A	126
29-A	1402-A	5			AMD PL 402	C	83	32	2431-A	2	B		AMD PL 407	A	127
29-A	1403				AFF PL 402	F	1	32	3292				AMD PL 407	A	128
29-A	1403				AMD PL 402	C	84	32	3817				AMD PL 407	A	129
29-A	1411				RP PL 327		18	32	3837-A	1	B		AMD PL 407	A	130
29-A	2455	3			AMD PL 407	A	117	32	4878				AMD PL 360		9
29-A	2458	2	T		AMD PL 327		19	32	6202				AMD PL 407	A	131
29-A	2458	2	U		AMD PL 327		20	32	6203-A	1			AMD PL 407	A	132
29-A	2458	2	V		NEW PL 327		21	32	6203-A	3			AMD PL 407	A	133
								32	6203-A	7			AMD PL 407	A	134
30-A	104				AMD PL 332		3	32	6206	1			AMD PL 407	A	135
30-A	183	1			AFF PL 402	F	1	32	6206	4			AMD PL 407	A	136
30-A	183	1			AMD PL 402	C	85	32	6206	5			AMD PL 407	A	137
30-A	351	5			NEW PL 332		4	32	6217-B	1			AMD PL 407	A	138
30-A	381	6			NEW PL 332		5	32	6221				AMD PL 407	A	139
30-A	386	4			NEW PL 332		6	32	7004				AMD PL 407	A	140
30-A	1556	1			AMD PL 407	A	118	32	9403	3-B			AMD PL 407	A	141
30-A	1659-A	3	E		AMD PL 407	A	119	32	9403	3-C			AMD PL 407	A	141
30-A	2152	1	B		AMD PL 398		1	32	9405	1-A	F		AFF PL 402	F	1
30-A	2152	1-A			NEW PL 398		2	32	9405	1-A	F		AMD PL 402	C	86
30-A	2152	2			AMD PL 398		3	32	9405	1-A	F		AMD PL 407	A	142
30-A	2155				AMD PL 398		4	32	9410-A	1	H		AMD PL 407	A	143
30-A	3014	2	B		RPR PL 393		1	32	9410-A	1	J		AFF PL 402	F	1
30-A	4201	3			COR RR 1		21	32	9410-A	1	J		AMD PL 402	C	87
30-A	4201	5			COR RR 1		21	32	9860-A	1			AMD PL 407	A	144
30-A	4301	1			COR RR 1		22	32	11002	2			AMD PL 317		1
30-A	4349-A	1	C		AMD PL 407	A	120	32	11013	9	D		AMD PL 318		1
30-A	4452	5	U		AMD PL 409	C	1	32	13721	1	D		AMD PL 407	A	145
30-A	4452	5	V		AMD PL 409	C	2	32	13815	1			RP PL 364		6
30-A	4452	5	W		NEW PL 409	C	3	32	13815	2			AMD PL 364		7
30-A	4702	6			COR RR 1		23	32	13856	1			AMD PL 407	A	146
30-A	4722	1	DD		COR RR 1		24	32	13861-A	1	A		AMD PL 407	A	147
30-A	4753	3			COR RR 1		25	32	14049-A		1st		COR RR 1		30
30-A	5002	6	B		AMD PL 407	A	121	32	14049-K				RP PL 351		1
30-A	5002	11			COR RR 1		26	32	14308-A	1			AMD PL 407	A	148
30-A	5246	1			COR RR 1		27	32	16202	12			AFF PL 402	F	1
30-A	6006-F	3	A		AMD PL 389		1	32	16202	12			AMD PL 402	C	88
30-A	6201	1			AMD PL 313		1	32	18302	2			RP PL 388		1

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32	18302	3		RP	PL 388		1	33	118			NEW	PL 402	B	2
32	18302	11		AMD	PL 388		2	33	191			NEW	PL 345		4
32	18302	15		AMD	PL 388		3	33	192			NEW	PL 345		4
32	18302	34		RP	PL 388		4	33	193			NEW	PL 345		4
32	18304	2	H	AMD	PL 388		5	33	480	1		AFF	PL 402	F	1
32	18305	2	J	AMD	PL 388		6	33	480	1		AMD	PL 402	C	89
32	18305	2	K	RP	PL 388		7	33	702			AMD	PL 330		1
32	18342	4		RP	PL 388		8	33	1021	6		AFF	PL 402	F	1
32	18342	5		RP	PL 388		8	33	1021	6		AMD	PL 402	E	1
32	18345	1	A	AMD	PL 388		9	33	1602-103	(b)		AFF	PL 402	F	1
32	18348	1		RP	PL 388		10	33	1602-103	(b)		AMD	PL 402	B	3
32	18348	4		AMD	PL 388		11	33	1603-116	(b)		AFF	PL 402	F	1
32	18351		2nd	AMD	PL 388		12	33	1603-116	(b)		AMD	PL 402	C	90
32	18371	1		AMD	PL 388		13	33	1669	1		AFF	PL 402	F	1
32	18371	2	A	RP	PL 388		14	33	1669	1		AMD	PL 402	C	91
32	18371	2	B	RP	PL 388		14								
32	18371	3	A	AMD	PL 388		15	34-A	1206	1	D	AMD	PL 407	A	150
32	18371	3	C	AMD	PL 388		15	34-A	1206-A	1	B	AMD	PL 407	A	151
32	18372	1		AMD	PL 388		16	34-A	1208-B	1	A	AMD	PL 407	A	152
32	18373	1		AMD	PL 388		17	34-A	1214	5		AMD	PL 407	A	153
32	18373	2		AMD	PL 388		17	34-A	1214-A	3		AFF	PL 402	F	1
32	18374	1	F	AMD	PL 388		18	34-A	1214-A	3		AMD	PL 402	C	92
32	18374	2		AMD	PL 388		19	34-A	3036-A	3	F	AMD	PL 407	A	154
32	18375	1	K	RP	PL 388		20	34-A	3040-A	1		AFF	PL 402	F	1
32	18375	1	L	AMD	PL 388		21	34-A	3040-A	1		AMD	PL 402	C	93
32	18376	1	H	RP	PL 388		22	34-A	3040-A	4		AFF	PL 402	F	1
32	18376	1	U	AMD	PL 388		23	34-A	3040-A	4		AMD	PL 402	C	94
32	18376	1	FF	AMD	PL 388		23	34-A	7002	2	A	AMD	PL 407	A	155
32	18378	1	A	AMD	PL 388		24	34-A	11273	15	A	AMD	PL 377		4
32	18393	2		AMD	PL 407	A	149								
33	101			AFF	PL 402	F	1	34-B	1208	1	D	AMD	PL 407	A	156
33	101			RP	PL 402	B	1	34-B	1221		1st	AMD	PL 407	A	157
33	101-A			AFF	PL 402	F	1	34-B	1221	1	C	AMD	PL 407	A	158
33	101-A			RP	PL 402	B	1	34-B	3011			COR	RR 1		31
33	102			AFF	PL 402	F	1	34-B	3801	11		AMD	PL 407	A	159
33	102			RP	PL 402	B	1	34-B	3831	6		AFF	PL 402	F	1
33	103			AFF	PL 402	F	1	34-B	3831	6		AMD	PL 402	C	95
33	103			RP	PL 402	B	1	34-B	3861	3	A	AFF	PL 402	F	1
33	104			AFF	PL 402	F	1	34-B	3861	3	A	AMD	PL 402	C	96
33	104			RP	PL 402	B	1	34-B	3862	1	B	AFF	PL 402	F	1
33	105			AFF	PL 402	F	1	34-B	3862	1	B	AMD	PL 402	C	97
33	105			RP	PL 402	B	1	34-B	5001	4	B	AFF	PL 402	F	1
33	106			AFF	PL 402	F	1	34-B	5001	4	B	AMD	PL 402	C	98
33	106			RP	PL 402	B	1	34-B	5001	7		AFF	PL 402	F	1
33	111			AFF	PL 402	F	1	34-B	5001	7		AMD	PL 402	C	99
33	111			NEW	PL 402	B	2	35-A	2503	2		AMD	PL 344		1
33	112			AFF	PL 402	F	1	35-A	3209-A			COR	RR 1		32
33	112			NEW	PL 402	B	2	35-A	3214	2-A		AMD	PL 414		1
33	113			AFF	PL 402	F	1	35-A	4355	1		AFF	PL 402	F	1
33	113			NEW	PL 402	B	2	35-A	4355	1		AMD	PL 402	C	100
33	114			AFF	PL 402	F	1	35-A	4391	5		AFF	PL 402	F	1
33	114			NEW	PL 402	B	2	35-A	4391	5		AMD	PL 402	C	101
33	115			AFF	PL 402	F	1	35-A	4392	3		AFF	PL 402	F	1
33	115			NEW	PL 402	B	2	35-A	4392	3		AMD	PL 402	C	102
33	116			AFF	PL 402	F	1	35-A	7104	7		AMD	PL 408		3
33	116			NEW	PL 402	B	2	35-A	8702	1		AMD	PL 408		4
33	117			AFF	PL 402	F	1	35-A	8703	4		AMD	PL 408		5
33	117			NEW	PL 402	B	2	35-A	8703	8		AMD	PL 408		5
33	118			AFF	PL 402	F	1	35-A	8704			AMD	PL 408		6

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35-A	9204-A	6-A		NEW	PL 344		2	36	4641-D	4		AMD	PL 402	E	5
35-A	10110	2	L	AMD	PL 414		2	36	4641-D	6		AFF	PL 402	F	1
35-A	10111	2		AMD	PL 358		1	36	4641-D	6		AMD	PL 402	C	107
36	191	2	SS	AMD	PL 375	G	1	36	4641-D	6		AMD	PL 402	E	6
36	191	2	DDD	RAL	PL 375	D	1	36	4641-D	7		AFF	PL 402	F	1
36	191	2	DDD	RPR	PL 375	D	2	36	4641-D	7		NEW	PL 402	E	7
36	191	2	EEE	NEW	PL 361		1	36	5122	2	E	AMD	PL 375	C	1
36	191	2	EEE	RAL	PL 375	D	1	36	5219-HH	1	J	AMD	PL 339		1
36	191	2	FFF	NEW	PL 361		1	36	5219-HH	3		RP	PL 375	G	2
36	271	1		AMD	PL 367		1	36	5219-PP	4		AMD	PL 375	C	2
36	271	5-A		NEW	PL 367		2	36	5219-QQ			AMD	PL 405		1
36	606			AFF	PL 402	F	1	36	5219-QQ2	E		AMD	PL 375	D	3
36	606			AMD	PL 402	C	103	36	5219-QQ2	F		COR	RR 1		33
36	611	2nd		AMD	PL 367		3	36	5219-QQ3			AMD	PL 375	D	4
36	706			RP	PL 367		4	36	5219-QQ4			AMD	PL 375	D	4
36	706-A			NEW	PL 367		5	36	5219-QQ5			NEW	PL 375	D	5
36	713	last		AMD	PL 367		6	36	5219-RR			NEW	PL 361		2
36	841	1		AMD	PL 367		7	37-B	8-A			NEW	PL 370		2
36	841	4		AMD	PL 367		8	37-B	949			NEW	PL 396		5
36	1282		6th	NEW	PL 375	F	1	37-B	949-A			NEW	PL 396		5
36	1283		2nd	AMD	PL 375	F	2	37-B	949-B			NEW	PL 396		5
36	1283		3rd	AMD	PL 375	F	3	37-B	949-C			NEW	PL 396		5
36	1331		3rd	AMD	PL 367		9	37-B	949-D			NEW	PL 396		5
36	1752	1-I		NEW	PL 409	D	1	37-B	949-E			NEW	PL 396		5
36	1752	1-J		NEW	PL 409	D	1	37-B	949-F			NEW	PL 396		5
36	1752	6-D		NEW	PL 409	D	1	37-B	949-G			NEW	PL 396		5
36	1752	11-B		NEW	PL 375	A	1	37-B	949-H			NEW	PL 396		5
36	1752	14	A	AMD	PL 375	A	2	37-B	949-I			NEW	PL 396		5
36	1752	20-C		NEW	PL 375	A	3	37-B	949-J			NEW	PL 396		5
36	1754-B	1	F	AMD	PL 375	A	4	37-B	949-K			NEW	PL 396		5
36	1754-B	1	F-1	NEW	PL 375	A	5	38	341-C	3		AMD	PL 334		1
36	1754-B	1	F-2	NEW	PL 375	A	5	38	341-C	5		RP	PL 334		2
36	1759			AMD	PL 375	H	1	38	341-C	4	D	AMD	PL 334		3
36	1760	28		AMD	PL 407	A	160	38	341-D	4		AMD	PL 376		1
36	1760	41		RP	PL 375	I	1	38	349	2-A		AMD	PL 319		1
36	1760	41-A		NEW	PL 375	I	2	38	361-A	1-L		NEW	PL 353		1
36	1760	102		AFF	PL 399		2	38	361-A	3-D		NEW	PL 353		1
36	1760	102		NEW	PL 399		1	38	414-B	1		RP	PL 353		2
36	1811		1st	AMD	PL 409	D	2	38	414-D			NEW	PL 353		3
36	1817			RP	PL 409	D	3	38	464	4	A	AMD	PL 319		2
36	1818			NEW	PL 409	D	4	38	464	4	D	AMD	PL 319		3
36	2521-D			NEW	PL 375	B	1	38	465	1	B	AMD	PL 319		4
36	2521-E			NEW	PL 375	B	1	38	465	2	B	AMD	PL 319		5
36	2557	6		AMD	PL 407	A	161	38	465	3	B	AMD	PL 319		6
36	4079			AFF	PL 402	F	1	38	465	3	C	AMD	PL 319		7
36	4079			AMD	PL 402	C	104	38	465	4	B	AMD	PL 319		8
36	4118			AFF	PL 402	F	1	38	465	4	C	AMD	PL 319		9
36	4118			AMD	PL 402	C	105	38	465-A	1	B	AMD	PL 319		10
36	4602	3	D	AFF	PL 403	A	4	38	465-B	1	B	AMD	PL 319		11
36	4602	3	D	AMD	PL 403	A	3	38	465-B	2	B	AMD	PL 319		12
36	4641-C	11		AFF	PL 402	F	1	38	465-B	3	B	AMD	PL 319		13
36	4641-C	11		AMD	PL 402	C	106	38	490-RR	2	D	COR	RR 1		34
36	4641-C	19		AFF	PL 402	F	1	38	563-B	1	1st	AMD	PL 333		1
36	4641-C	19		AMD	PL 402	E	2	38	563-B	2		AMD	PL 333		2
36	4641-C	20		AFF	PL 402	F	1	38	564		1st	AMD	PL 333		3
36	4641-C	20		AMD	PL 402	E	3	38	564	1-A	A	AMD	PL 333		4
36	4641-C	21		AFF	PL 402	F	1	38	564	1-A	B	AMD	PL 333		4
36	4641-C	21		NEW	PL 402	E	4	38	564	2-A		AMD	PL 333		5
36	4641-D	4		AFF	PL 402	F	1	38	564	6		AMD	PL 333		6

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38	566-A	1			AMD PL 333		7
38	566-A	1-A			AMD PL 333		8
38	566-A	3			AMD PL 333		9
38	570-F				AMD PL 333		10
38	570-N				NEW PL 333		11
38	580-B	3			AMD PL 323		1
38	580-B	3-A			AMD PL 323		2
38	1362	1-D	A		AFF PL 402	F	1
38	1362	1-D	A		AMD PL 402	C	108
38	1610	2			AMD PL 391		1
38	1610	5			AMD PL 391		2
38	1610	6-A			AMD PL 391		3
38	1610	7			AMD PL 391		4
38	1610	10			AMD PL 391		5
38	2124-A			1st	AMD PL 376		2
38	2137-A				NEW PL 369		1
39-A	104			1st	AFF PL 402	F	1
39-A	104			1st	AMD PL 402	C	109
39-A	403	3			AMD PL 401		1
39-A	403	5	A		AMD PL 401		2
39-A	403	5	A-1		NEW PL 401		3
39-A	403	5	D		AMD PL 401		4
39-A	403	10			AMD PL 401		5
39-A	403	14	H-1		NEW PL 401		6
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2017	170		C9 COR	RR	2017	1		37	
2017	257		6 COR	RR	2017	1		38	

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