

SUMMARY OF MAINE STATUTES RELATING TO HEALTH OFFICERS

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August 2006

If in using this summary guide you discover mistakes or omissions, please contact the Maine Center for Disease Control and Prevention at 287-8016. Please send all correspondence to Elaine Lovejoy, 11 State House Station, Augusta, Maine 04333-0011 or e-mail to elaine.lovejoy@maine.gov

This reference is not infallible. It was written to provide Maine statutes that relate to Health Officer activities. It was not meant to take the place of professional advice in any specific situation. If you are concerned that your situation may not be clear in relation to what may be described in Maine law, we urge to first consult with a private attorney.

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TITLE 4 DISTRICT COURT

§165. District Court; jurisdiction over crimes and juvenile offenses

1. Crimes; under one year imprisonment. The District Court has jurisdiction and, except as provided in Title 29-A, section 2602, concurrent jurisdiction with the Superior Court of all crimes, including violation of any statute or a bylaw of a town, village corporation or local **health officer** and breach of the peace, for which the maximum term of imprisonment to which the defendant may be sentenced upon conviction of that crime is less than one year. [1999, c. 731, Pt. ZZZ, §6 (new); §42 (aff).]

2. Juvenile Court. The District Court has jurisdiction over juvenile offenses pursuant to Title 15, Part 6. [1999, c. 731, Pt. ZZZ, §6 (new); §42 (aff).]

3. Crimes; one year or more imprisonment. The District Court has, concurrent with the Superior Court, original jurisdiction to receive pleas of guilty in criminal cases, other than murder, in which:

A. The maximum term of imprisonment to which the defendant may be sentenced upon conviction of that crime is one year or more; [1999, c. 731, Pt. ZZZ, §6 (new); §42 (aff).]

B. The defendant has in writing waived the defendant's right to indictment by grand jury and the defendant's right to a jury trial; and [1999, c. 731, Pt. ZZZ, §6 (new); §42 (aff).]

C. The defendant has indicated the defendant's intention to enter a plea of guilty to the charges pending against the defendant. [1999, c. 731, Pt. ZZZ, §6 (new); §42 (aff).]

When exercising such jurisdiction, the District Court possesses all of the powers of the Superior Court. The District Court shall exercise that jurisdiction in the manner that the Supreme Judicial Court by rule provides. Any person sentenced under this subsection is entitled to the rights provided by Title 15, chapter 306-A.

The District Court has jurisdiction to bind over for the grand jury all other crimes. [1999, c. 731, Pt. ZZZ, §6 (new); §42 (aff).]

4. Issue process. The District Court has jurisdiction to issue process with respect to any violation over which the Passamaquoddy Tribe or the Penobscot Nation exercises exclusive jurisdiction under Title 30, section 6209-A or 6209-B. [1999, c. 731, Pt. ZZZ, §6 (new); §42 (aff).]

5. Power to sentence. The District Court may impose any authorized sentencing alternative. [1999, c. 731, Pt. ZZZ, §6 (new); §42 (aff).]

TITLE 13 CORPORATIONS

§1343. Type of construction; examinations

Any such community mausoleum or other burial structure shall be constructed of such materials and workmanship as will insure its durability and permanency as well as the safety, convenience, comfort and health of the community in which it is located, as dictated and determined at the time by modern mausoleum construction and engineering science, and all crypts or catacombs placed in a mausoleum, vault or other burial structure as described in section 1342 shall be so constructed that all parts thereof may be readily examined by the Bureau of Health or any other **health officer**. Such crypts or catacombs, when used for the permanent interment of a deceased body or bodies, shall be so hermetically sealed that no offensive odor or effluvia may escape therefrom.

TITLE 14 RENTAL PROPERTY

§6021. Implied warranty and covenant of habitability

1. Definition. As used in this section, the term "dwelling unit" shall include mobile homes, apartments, buildings or other structures, including the common areas thereof, which are rented for human habitation.

[1977, c. 401, § 4 (new).]

2. Implied warranty of fitness for human habitation. In any written or oral agreement for rental of a dwelling unit, the landlord shall be deemed to covenant and warrant that the dwelling unit is fit for human habitation.

[1977, c. 401, § 4 (new).]

3. Complaints. If a condition exists in a dwelling unit which renders the dwelling unit unfit for human habitation, then a tenant may file a complaint against the landlord in the District Court or Superior Court. The complaint shall state that:

A. A condition, which shall be described, endangers or materially impairs the health or safety of the tenants;

[1977, c. 401, § 4 (new).]

B. The condition was not caused by the tenant or another person acting under his control;

[1977, c. 401, § 4 (new).]

C. Written notice of the condition without unreasonable delay, was given to the landlord or to the person who customarily collects rent on behalf of the landlord;

[1977, c. 401, § 4 (new).]

D. The landlord unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and

[1977, c. 401, § 4 (new).]

E. The tenant was current in rental payments owing to the landlord at the time written notice was given.

[1977, c. 401, § 4 (new).]

The notice requirement of paragraph C may be satisfied by actual notice to the person who customarily collects rents on behalf of the landlord.

[1977, c. 401, § 4 (new).]

4. Remedies. If the court finds that the allegations in the complaint are true, the landlord shall be deemed to have breached the warranty of fitness for human habitation established by this section, as of the date when actual notice of the condition was given to the landlord. In addition to any other relief or remedies which may otherwise exist, the court may take one or more of the following actions.

A. The court may issue appropriate injunctions ordering the landlord to repair all conditions which endanger or materially impair the health or safety of the tenant;

[1977, c. 401, § 4 (new).]

B. The court may determine the fair value of the use and occupancy of the dwelling unit by the tenant from the date when the landlord received actual notice of the condition until such time as the condition is repaired, and further declare what, if any, moneys the tenant owes the landlord or what, if any, rebate the landlord owes the tenant for rent paid in excess of the value of use and occupancy. In making this determination, there shall be a rebuttable presumption that the rental amount equals the fair value of the dwelling unit free from any condition rendering it unfit for human habitation. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.

[1977, c. 696, § 164 (amd).]

C. The court may authorize the tenant to temporarily vacate the dwelling unit if the unit must be vacant during necessary repairs. No use and occupation charge shall be incurred by a tenant until such time as the tenant resumes occupation of the dwelling unit. If the landlord offers reasonable, alternative housing accommodations, the court may not surcharge the landlord for alternate tenant housing during the period of necessary repairs.

[1981, c. 428, § 9 (amd).]

D. The court may enter such other orders as the court may deem necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation.

Upon the filing of a complaint under this section, the court shall enter such temporary restraining orders as may be necessary to protect the health or well-being of tenants or of the public.

[1977, c. 401, § 4 (new).]

[1981, c. 428, § 9 (amd).]

5. Waiver. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.

Any agreement, other than as provided in this subsection, by a tenant to waive any of the rights or benefits provided by this section shall be void.

[1977, c. 401, § 4 (new).]

6. Heating requirements. It is a breach of the implied warranty of fitness for human habitation when the landlord is obligated by agreement or lease to provide heat for a dwelling unit and:

A. The landlord maintains an indoor temperature which is so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;

[1983, c. 764, § 1 (new).]

B. The dwelling unit's heating facilities are not capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; or

[1983, c. 764, § 1 (new).]

C. The heating facilities are not operated so as to protect the building equipment and systems from freezing.

[1983, c. 764, § 1 (new).]

Municipalities of this State are empowered to adopt or retain more stringent standards by ordinances, laws or regulations provided in this section. Any less restrictive municipal ordinance, law or regulation establishing standards are invalid and of no force and suspended by this section.

[1983, c. 764, § 1 (new).]

7. Rights are supplemental.

[T. 14, §6021, sub-§7 (rp).]

§6022. Receipts for rent payments and security deposits

1. Rent receipts required. A landlord or his agent shall provide a written receipt, as required in subsection 2, for each rental payment and each security deposit payment received partially or fully in cash from any tenant. This receipt shall be delivered to the tenant at the time the cash payment is accepted. If either the rent or security deposit is accepted in more than one installment instead of a single payment, a separate receipt shall be provided for each payment. If the payment for rent and security deposit is received at the same time, a separate receipt, properly identified in accordance with subsection 2, shall be issued each for the rental payment and for the security deposit.

[1979, c. 180 (new).]

2. Minimum information. The information contained in each receipt shall include, but is not limited to, the following: The date of the payment; the amount paid; the name of the party for whom the payment is made; the period for which the payment is being made; a statement that the payment is either for rent or for security deposit; the signature of the person receiving the payment; and the name of that person printed in a legible manner. A rent card retained by the tenant and containing the aforementioned information shall satisfy the requirements of this section.

[1979, c. 180 (new).]

3. Exemption. This section shall not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.

[1979, c. 180 (new).]

§6023. Agency

Any person authorized to enter into a residential rental agreement on behalf of the owner or owners of the premises shall be deemed to be the owner's agent for purposes of service of process and receiving and receipting for notices and demands. [1979, c. 180 (new).]

§6024. Electric metering in common areas

No landlord may lease or offer to lease a dwelling unit in a multi-unit residential building where the expense of furnishing electricity to the common areas or other area not within the unit is the sole responsibility of the tenant in that unit, unless both parties to the lease have agreed in writing that the tenant will pay for such costs in return for a stated reduction in rent or other specified fair consideration that approximates the actual cost of electricity to the common areas. "Common areas" include, but are not limited to, hallways, stairwells, basements, attics, storage areas, fuel furnaces or water heaters used in common with other tenants. Except as provided in this section, a written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section is liable to the lessee for actual damages or \$100, whichever is greater, and reasonable attorneys' fees and costs. [1985, c. 638, § 5 (amd).]

§6024-A. Landlord failure to pay for utility service

If a landlord fails to pay for utility service in the name of the landlord, the tenant, in accordance with Title 35-A, section 706, may pay for the utility service and deduct the amount paid from the rent due to the landlord. [1989, c. 87, §1 (new).]

§6025. Access to premises

1. Tenant obligations. A tenant may not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

A tenant may not change the lock to the dwelling unit without giving notice to the landlord and giving the landlord a duplicate key within 48 hours of the change.

[1999, c. 204, §1 (amd).]

2. Landlord obligations. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant reasonable notice of his intent to enter and shall enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

[1981, c. 428, §10 (new).]

3. Remedy. If a landlord makes an entry in violation of this section, makes a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages or \$100, whichever is greater, and obtain injunctive relief to prevent recurrence of the conduct, and if the tenant obtains a judgment after a contested hearing, reasonable attorney's fees.

If a tenant changes the lock and does not provide the landlord with a duplicate key, in the case of emergency the landlord may gain admission through whatever reasonable means necessary and charge the tenant reasonable costs for any resulting damage. If a tenant changes the lock and refuses to provide the landlord with a duplicate key, the landlord may terminate the tenancy with a 7-day notice.

[1999, c. 204, §1 (amd).]

4. Waiver. Any agreement by a tenant to waive any of the rights or benefits provided by this section is against public policy and is void.

[1981, c. 428, §10 (new).]

§6026. Dangerous conditions requiring minor repairs

1. Prohibition of dangerous conditions. No landlord leasing premises for human habitation may maintain or permit to exist on those premises any condition which endangers or materially impairs the health or safety of the tenants.

[1981, c. 428, §10 (new).]

2. Tenant action if landlord fails to act. If a landlord fails to maintain a rental unit in compliance with the standards of subsection 1 and the reasonable cost of compliance is less than \$250 or an amount equal to 1/2 the monthly rent, whichever is greater, the tenant shall notify the landlord in writing of the tenant's intention to correct the condition at the landlord's expense. If the landlord fails to comply within 14 days after being notified by the tenant in writing by certified mail, return receipt requested, or as promptly as conditions require in case of emergency, the tenant may cause the work to be done with due professional care with the same quality of materials as are being repaired. Installation and servicing of electrical, oil burner or plumbing equipment must be by a professional licensed pursuant to Title 32. After submitting to the landlord an itemized statement, the tenant may deduct from the tenant's rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection. This subsection does not apply to repairs of damage caused by the tenant or the tenant's invitee.

[1993, c. 236, §1 (amd).]

3. Limitation on rights. No tenant may exercise his rights pursuant to this section if the condition was caused by the tenant, his guest or an invitee of the tenant, nor where the landlord is unreasonably denied access, nor where extreme weather conditions prevent the landlord from making the repair.

[1981, c. 428, §10 (new).]

4. Limitation on reimbursement. No tenant may seek or receive reimbursement for labor provided by the tenant or any member of his immediate family pursuant to this section. Parts and materials purchased by the tenant are reimbursable.

[1981, c. 428, §10 (new).]

5. Waiver. A provision in a lease, whether oral or written, in which the tenant waives either his rights under this section or the duty of the landlord to maintain the premises in compliance with the standards of fitness specified in this section or any other duly promulgated ordinance or regulation is void, except that a written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration is binding on the tenant and the landlord.

[1981, c. 428, §10 (new).]

6. Rights are supplemental. The rights created by this section are supplemental to and in no way limit the rights of a tenant under section 6021.

[1981, c. 428, §10 (new).]

7. Limitation on liability. Whenever repairs are undertaken by or on behalf of the tenant, the landlord shall be held free from liability for injury to that tenant or other persons injured thereby.

[1981, c. 428, §10 (new).]

8. Application. This section does not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.

[1981, c. 428, §10 (new).]

9. Lack of Heat. If the landlord fails to comply with the provisions of Title 14, section 6021, subsection 6, then the purchase of heating fuel by the tenant shall be deemed to be a "cost of compliance" within the meaning of subsection 2. For tenants on general assistance, municipalities shall have the rights of tenants under this subsection.

[1983, c. 764, §2 (new).]

§6027. Discrimination against families with children prohibited (REPEALED)

§6028. Penalties for late payment of rent

A landlord may assess a penalty against a residential tenant for late payment of rent for a residential dwelling unit according to this section. [1987, c. 605 (amd).]

1. Late payment. A payment of rent is late if it is not made within 15 days from the time the payment is due.

[1987, c. 215 (new).]

2. Maximum penalty. A landlord may not assess a penalty for the late payment of rent which exceeds 4% of the amount due for one month.

[1987, c. 215 (new).]

3. Notice in writing. A landlord may not assess a penalty for the late payment of rent unless the landlord gave the tenant written notice at the time they entered into the rental agreement that a penalty, up to 4% of one month's rent, may be charged for the late payment of rent.

[1987, c. 215 (new).]

§6029. Discrimination based on general assistance escrow accounts prohibited (REPEALED)

§6030. Unfair rental contracts

1. Illegal waiver of rights. It is an unfair and deceptive trade practice in violation of Title 5, section 207 for a landlord to require a tenant to enter into a rental agreement for a dwelling unit, as defined in section 6021, in which the tenant agrees to a lease or rule provision that has the effect of waiving a tenant right established in chapter 709, this chapter and chapter 710-A. This subsection does not apply when the law specifically allows the tenant to waive a statutory right during negotiations with the landlord.

[1991, c. 704 (amd).]

2. Unenforceable provisions. The following rental agreement or rule provisions for a dwelling unit, as defined in section 6021, are specifically declared to be unenforceable and in violation of Title 5, section 207:

A. Any provision that absolves the landlord from liability for the negligence of the landlord or the landlord's agent;

[1991, c. 361, §2 (new); §3 (aff).]

B. Any provision that requires the tenant to pay the landlord's legal fees in enforcing the rental agreement;

[1991, c. 361, §2 (new); §3 (aff).]

C. Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and

[1991, c. 361, §2 (new); §3 (aff).]

D. Any provision that requires the tenant to acknowledge that the provisions of the rental agreement, including tenant rules, are fair and reasonable.

[1991, c. 361, §2 (new); §3 (aff).]

[1991, c. 704 (amd).]

3. Exception. Notwithstanding subsection 2, paragraph B, a rental agreement or rule provision that provides for the award of attorney's fees to the prevailing party after a contested hearing to enforce the rental agreement in cases of wanton disregard of the terms of the rental agreement is not in violation of Title 5, section 207 and is enforceable.

[1991, c. 704 (new).]

§6030-A. Protection of rental property or tenants

1. Commencing action. A landlord may file a petition against a tenant, a guest or invitee of a tenant or the owner of a dangerous pet on the premises for the protection of rental property or tenants when the landlord, the landlord's employee or agent, the landlord's rental property or persons who are tenants of the landlord have experienced harm or have been threatened with harm by a tenant of the landlord, a guest or invitee of a tenant or a dangerous pet on the premises. The landlord may file the petition in the

landlord's own name or, when the landlord has written authority from a tenant to do so, may file the action on behalf of the aggrieved tenant, or both.

[2003, c. 265, §1 (amd).]

2. Procedures and relief. Actions under this section are governed by the procedural provisions of Title 5, chapter 337-A. In addition, a temporary order may be sought if the landlord's rental property is in an immediate and present danger of suffering substantial damage as a result of the defendant's actions, and additional injunctive relief may be granted enjoining the defendant from damaging the landlord's or aggrieved tenant's property or from threatening, assaulting, molesting, confronting or otherwise disturbing the peace of the landlord, the landlord's employee or agent or of any aggrieved tenant.

[1995, c. 650, §8 (new).]

TITLE 17 NUISANCES

§2253. Out-of-state waste matter

As used in this section, "waste matter" means garbage, refuse, solid or liquid waste, ashes, rubbish, industrial and commercial waste, and all other refuse of every description, whether loose, in containers, compacted, baled, bundled or otherwise. [1969, c. 570.]

No person, firm, corporation or other legal entity shall deposit, or cause or permit to be deposited, any waste matter in any structure or on any land within the State, which waste matter originated outside the State. [1969, c. 570.]

Nothing in this section shall be construed to prohibit the transportation of waste matter into the State for use as a raw material for the production of new commodities which are not waste matter as defined, or for use to produce energy for use or sale. [1975, c. 739, § 2 (amd).]

Whoever shall violate this section shall be punished by a fine of not less than \$200 nor more than \$2,000 for each violation. Each day that such violation continues or exists shall constitute a separate offense. [1969, c. 570.]

The Superior Court, upon complaint of the Attorney General, the municipal officers of any municipality, or any local or state **health officer**, shall have jurisdiction to restrain or enjoin violations of this section, and to enter decrees requiring the removal from the State of waste matter deposited in violation of this section. In any such civil proceeding, neither an allegation nor proof of unavoidable or substantial and irreparable injury shall be required to obtain a temporary restraining order or injunction, nor shall bond be required of the plaintiff; and the burden of proof shall be on the defendant to show that the waste matter involved originated within the State. [1969, c. 570.]

§2701. Action for damages caused by nuisance

Any person injured in his comfort, property or the enjoyment of his estate by a common and public or a private nuisance may maintain against the offender a civil action for his damages, unless otherwise specially provided.

§2701-B. Action against improper manure handling

The Commissioner of Agriculture, Food and Rural Resources shall investigate complaints of improper manure handling, including, but not limited to, complaints of improper storage or spreading of manure. If the commissioner is able to identify the source or sources of the manure and has reason to believe that the manure is a nuisance and the nuisance is caused by the use of other than best management practices for manure handling, the commissioner shall: [1993, c. 124, §2 (amd).]

1. Findings. Determine the changes needed in manure handling to comply with best management

practices for manure handling; [1993, c. 124, §2 (amd).]

2. Conformance. Require the person responsible to abide by the necessary changes determined in subsection 1 and determine if the changes have been made; and [1993, c. 124, §2 (amd).]

3. Report. Give the written findings of the initial investigation and any determination of compliance to the complainant and the person responsible. [1993, c. 124, §2 (amd).]

If the person responsible does not adopt best management practices for manure handling, the commissioner shall send a copy of the written report to the Department of Environmental Protection and refer the matter in writing to the Attorney General. The Attorney General may institute an action to abate a nuisance and the court may order the abatement with costs as provided under this chapter. If the commissioner, upon investigation, finds that the person responsible for the manure is following best management practices for manure handling, the commissioner shall advise the complainant and the person responsible in writing. [1993, c. 124, §2 (amd).]

Failure to apply best management practices in accordance with this section constitutes a separate civil violation for which a fine of up to \$1,000, together with an additional fine of up to \$250 per day for every day that the violation continues, may be adjudged. [2003, c. 283, §5.]

The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act for the interpretation and implementation of this section, including a definition of "best management practices for manure handling." [1993, c. 124, §2 (amd).]

If the commissioner finds that improper manure handling may have affected water quality and the person responsible does not adopt best management practices for manure handling, the commissioner shall advise the Commissioner of Environmental Protection that a potential water quality violation exists and the Commissioner of Environmental Protection may respond as appropriate. [1993, c. 124, §2 (amd).]

§2702. Abatement of nuisance

When on indictment, complaint or action any person is adjudged guilty of a nuisance, the court, in addition to the fine imposed, if any, or to the judgment for damages and costs for which a separate execution shall issue, may order the nuisance abated or removed at the expense of the defendant. After inquiring into and estimating, as nearly as may be, the sum necessary to defray the expense thereof, the court may issue a warrant therefor substantially in the form following

"STATE OF MAINE

.. " Headnote="....., ss. To the sheriff of our county of, or either of his deputies, Greetings.

Whereas, by the consideration of our honorable Court, at a term begun and held at, within and for said county, upon indictment," (or "complaint," or "action in favor of A. B.," as the case may be,) "C. D., of, &c., was adjudged guilty of erecting," ["causing," or "continuing,"] "a certain nuisance, being a building in, in said county," (or "fence," or other thing, describing particularly the nuisance and the place,) "which nuisance was ordered by said court to be abated and removed: We therefore command you forthwith to cause said nuisance to be abated and removed; also that you levy of the materials by you so removed, and of the goods, chattels and lands of said C. D., a sum sufficient to defray the expense of removing and abating the same, not to exceed dollars," (the sum estimated by the court,) "together with your lawful fees, and thirty-three cents more for this writ. And, for want of such goods and estate to satisfy said sums, we command you to take the body of said C. D., and him commit unto our jail in in said county, and there detain until he pays such sums or is legally discharged. And make return of this warrant, with your doings thereon, within thirty days.

Witness, A. B., Esq., at, this day of, in the year of our Lord 19....

J. S., Clerk."

§2705. Jurisdiction by injunction

Any court of record before which an indictment, complaint or action for a nuisance is pending may, in

any county, issue an injunction to stay or prevent such nuisance, and make such orders and decrees for enforcing or dissolving it as justice and equity require.

§2706. Penalty and abatement of nuisance

Whoever erects, causes or continues a public or common nuisance, as herein described or at common law, where no other punishment is specially provided, shall be punished by a fine of not more than \$100. The court with or without such fine may order such nuisance to be discontinued or abated, and issue a warrant therefor as provided.

§2741. Common nuisances; jurisdiction to abate

1. Common nuisances. The following are common nuisances. [2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

A. All places used as houses of ill fame or for the illegal sale or keeping of intoxicating liquors or scheduled drugs or resorted to for lewdness or gambling;

[2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

B. All houses, shops or places where intoxicating liquors are sold for tipping purposes; and

[2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

C. All places of resort where intoxicating liquors are kept, sold, given away, drunk or dispensed in any manner not provided for by law.

[2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

2. Superior Court jurisdiction. The Superior Court has jurisdiction, upon information filed by the Attorney General or the district attorney or upon complaint filed by not fewer than 7 legal voters of that county setting forth any of the facts contained in this section, to restrain, enjoin or abate a common nuisance as set out in subsection 1 and an injunction for those purposes may be issued by the court. A dismissal of an information or complaint does not prevent action upon any information or complaint subsequently filed covering the same subject matter. [2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

3. Injunction or order. The injunction or order to restrain, enjoin or abate the common nuisance forever runs against the building or other place or structure, except that, upon motion of an owner filed not sooner than 6 months from the date of the injunction or order, the Superior Court may remove or modify the injunction or order upon a showing by the owner, by a preponderance of evidence, that the nuisance has abated. [2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

4. Trafficking or furnishing scheduled drugs. For purposes of this subchapter, proof by a preponderance of evidence that an owner or occupant of a building or other place or structure, or any part thereof, has trafficked in or furnished at the building, place or structure, or any part thereof, any scheduled drug as defined by Title 17-A, chapter 45 on 2 or more occasions within a 3-year period is sufficient to prove that the building, place or structure is a common nuisance. [2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

5. Keeping, allowing or maintaining common nuisance. A person who keeps, allows or maintains a building, place or structure declared by the Superior Court to be a common nuisance upon the filing of information commits a Class E crime. [2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

6. Default in payment of fine. A person who defaults in payment of a fine imposed under this section commits a separate Class E crime. [2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

7. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34,

subsection 4-A. [2003, c. 452, Pt. I, §45 (new); Pt. X, §2 (aff).]

Subchapter 3: Particular Nuisances

§2791. Blasting; notice

Persons engaged in blasting lime rock or other rocks shall before each explosion give seasonable notice thereof, so that all persons or teams approaching shall have time to retire to a safe distance from the place of said explosion. No such explosion shall be made after sunset.

Whoever violates any provision of this section forfeits to the prosecutor \$5 for each offense, to be recovered in a civil action, and is liable for all damages caused by any explosion. If the persons engaged in blasting rocks are unable to pay or, after judgment and execution, avoid payment of the fine, damages and costs by the poor debtor's oath, the owners of the quarry, in whose employment they were, are liable for the same.

§2793. Certain lights prohibited along highways

No person shall place or maintain upon or in view of any highway any light so that its beams or rays are directed at any portion of a public street or highway when the light is of such brilliance and so positioned as to blind, dazzle or otherwise impair the vision of the driver of any motor vehicle upon said street or highway; or any rotating or flashing light or signal which imitates or simulates the flashing or rotating lights used on school buses, police, fire or highway vehicles, except safety signaling devices required by law. Whoever violates this section shall be punished by a fine of not more than \$100.

§2794. Dumping of oil

Oil, and a petroleum base, or materials containing significant quantities of such oil shall not be intentionally placed or deposited directly into or on banks of any river or stream, permanent or temporary, lake, pond or tidal waters or on the ice thereof where such material may fall or otherwise find its way into said watercourse or tidal waters, or shall such material be intentionally placed or deposited directly in pits, wells or on ground surfaces in such a manner that oil will percolate, seep or otherwise find access into ground waters or into wells used for the production of water.

§2795. License for use of certain engines

No stationary, internal combustion or steam engine shall be erected in a town until the municipal officers have granted license therefor, designating the place where the buildings therefor shall be erected, the materials and mode of construction, the size of the boiler and furnace, and such provision as to height of chimney or flues, and protection against fire and explosion, as they judge proper for the safety of the neighborhood. Such license shall be granted on written application, recorded in the town records and a certified copy of it furnished, without charge, to the applicant.

When application is made for such license, said officers shall assign a time and place for its consideration, and give at least 14 days' public notice thereof, in such manner as they think proper, at the expense of the applicant. Any person aggrieved by the decision of the selectmen of towns in granting or refusing such license may appeal therefrom within 30 days to the Superior Court held in said county, which court may appoint a committee of 3 disinterested persons, as is provided in relation to appeals from location of highways. Said committee shall be sworn and give 14 days' notice of the time and place of their hearing to the parties interested, view the premises, hear the parties, and affirm, reverse or annul the decision of said selectmen, and their decision shall be final. Pending such appeal from granting such license, the Superior Court may enjoin the erection of such building and engine.

Any such engine erected without a license shall be deemed a common nuisance without other proof than its use. Said officers shall have the same authority to abate and remove an engine, erected without

license, as is given to the local **health officer** in Title 22, chapter 153.

§2796. Manufacture of powder

If any person manufactures gunpowder, or mixes or grinds the composition therefor, in any building within 80 rods of any valuable building not owned by such person or his lessor, which was erected when such business was commenced, the former building shall be deemed a public nuisance; and such person may be prosecuted accordingly.

§2797. Mills and dams; fences and buildings on public ways

The erection and maintenance of watermills and dams to raise water for working them upon or across streams not navigable as provided in Title 38, chapter 5, shall not be deemed a nuisance, unless they become offensive to the neighborhood, or injurious to the public health, or unless they occasion injuries or annoyances of a kind not authorized by said chapter. Fences and buildings fronting on public ways, commons or lands appropriated to public use shall not be deemed nuisances when erected for the times and in the manner provided in Title 23, section 2952, unless the owner of the same shall be estopped as therein provided from justifying his occupation within the limits of said way.

§2799. Possession of poisonous snakes

The possession of poisonous snakes shall be a public nuisance, except where poisonous snakes shall be continuously confined in such type of enclosure as may be determined to be escape proof.

§2800. Removal of bushes, trees and stumps from flowed area

Whoever hereafter erects a dam on any of the public waters of this State shall, within 3 years after a head of water is held and flowage created thereby, remove from the flowed area all trees, bushes and stumps that he can legally remove therefrom, to such an extent that the tops of all trees, bushes and stumps left thereon shall be at least 5 feet below the surface of the mean low-water level maintained during the period beginning June 1st and ending December 1st next following of each year and shall within said 3-year period remove such growth as he can legally remove from the edge of the flowed area to such an extent that no dry-ki and debris shall form to be carried away by the water. For the purpose of protecting the right of the public in the navigation of the waters over said flowed area the owner of such dam shall, after the creation of flowage thereby, have the right to cut and remove from the flowed area all trees, bushes and stumps remaining thereon, and the damage to the owner thereof caused by such removal shall be ascertained in the same manner as is provided for the ascertainment of the damages caused by the flowage.

Any dam erected hereafter which is maintained in violation of this section shall constitute a public nuisance, and be subject to section 2706.

This section shall not apply to dams which are created solely for log driving purposes where the water is stored for not exceeding 3 months of each year, nor shall the same be interpreted in any instance to require the removal of stumps below the swell of the roots.

§2801. Spite fences

Any fence or other structure in the nature of a fence, unnecessarily exceeding 6 feet in height, maliciously kept and maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance.

§2802. Miscellaneous nuisances

The erection, continuance or use of any building or place for the exercise of a trade, employment or

manufacture that, by noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or of the public; causing or permitting abandoned wells or tin mining shafts to remain unfilled or uncovered to the injury or prejudice of others; causing or suffering any offal, filth or noisome substance to collect or to remain in any place to the prejudice of others; obstructing or impeding, without legal authority, the passage of any navigable river, harbor or collection of water; corrupting or rendering unwholesome or impure the water of a river, stream, pond or aquifer; imprudent operation of a watercraft as defined in Title 12, section 13068, subsection 8; unlawfully diverting the water of a river, stream, pond or aquifer from its natural course or state to the injury or prejudice of others; and the obstructing or encumbering by fences, buildings or otherwise of highways, private ways, streets, alleys, commons, common landing places or burying grounds are nuisances within the limitations and exceptions mentioned. Any places where one or more old, discarded, worn-out or junked motor vehicles as defined in Title 29-A, section 101, subsection 42, or parts thereof, are gathered together, kept, deposited or allowed to accumulate, in such manner or in such location or situation either within or without the limits of any highway, as to be unsightly, detracting from the natural scenery or injurious to the comfort and happiness of individuals and the public, and injurious to property rights, are public nuisances. [RR 2003, c. 2, §24 (cor).]

§2803. Assignment of place for

The municipal officers of a town, when they judge it necessary, may assign places therein for the exercise of any trades, employments or manufactures described in section 2802, and may forbid their exercise in other places, under penalty of being deemed public or common nuisances and the liability to be dealt with as such. All such assignments shall be entered in the records of the town and may be revoked when said officers judge proper.

§2804. Complaints about

When a place or building so assigned becomes a nuisance, offensive to the neighborhood or injurious to the public health, any person may complain thereof to the Superior Court and if, after notice to the party complained of, the truth of the complaint is admitted by default or made to appear to a jury on trial, the court may revoke such assignment and prohibit the further use of such place or building for such purposes, under a penalty of not more than \$100 for each month's continuance after such prohibition, to the use of said town; and may order it to be abated and issue a warrant therefor, or stay it as provided; but if the jury acquit the defendant, he shall recover costs of the complainant.

§2805. Farms or farm operations not a nuisance; use of best management practices

1. Definition. As used in this section, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 723, §2 (amd).]

A. "Farm" means the land, buildings and machinery used in the commercial production of farm products. [1981, c. 472.]

B. "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects, fumes, operation of machinery and irrigation pumps, ground and aerial seeding, ground spraying, composting of material produced by the farm or to be used at least in part on the farm, disposal of manure, the application of chemical fertilizers, soil amendments, conditioners and pesticides and the employment and use of labor. [1999, c. 723, §2 (amd).]

C. "Farm product" means those plants and animals useful to humans and includes, but is not limited to forages and sod crops, grains and food crops, dairy products, poultry and poultry products, bees, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products. [1999, c. 723, §2 (amd).]

2. Best management practices. [1999, c. 723, §2 (rp).]

2-A. Farm or farm operation not nuisance. A farm or farm operation may not be considered a public or private nuisance if the farm or farm operation alleged to be a nuisance meets one of the following conditions: [1999, c. 723, §2.]

A. The farm or farm operation conforms to best management practices, as determined by the Commissioner of Agriculture, Food and Rural Resources in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375; [1999, c. 723, §2.]

B. For complaints regarding the storage or use of farm nutrients as defined in Title 7, section 4201, subsection 4, the farm or farm operation has implemented a nutrient management plan developed in accordance with Title 7, section 4204 and operation of the farm is consistent with the nutrient management plan; or
[1999, c. 723, §2.]

C. The farm or farm operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm as long as, before the change in land use or occupancy, the farm or farm operation would not have been considered a nuisance. This paragraph does not apply to a farm or farm operation that materially changes the conditions or nature of the farm operation after a change in the land use or occupancy of land within one mile of the boundaries of the farm. Nothing in this paragraph affects the applicability of any of the other provisions of this section. [1999, c. 723, §2.]

3. Change in land use. [1999, c. 723, §2 (rp).]

3-A. Violation of municipal ordinances. A method of operation used by a farm or farm operation located in an area where agricultural activities are permitted may not be considered a violation of a municipal ordinance if the method of operation constitutes a best management practice as determined by the Department of Agriculture, Food and Rural Resources. [1993, c. 124, §3.]

4. Application; municipal ordinances. This section does not affect the application of state and federal laws. After the effective date of this subsection, a municipality must provide the Commissioner of Agriculture, Food and Rural Resources with a copy of any proposed ordinance that impacts farm operations. The clerk of the municipality or a municipal official designated by the clerk shall submit a copy of the proposed ordinance to the commissioner at least 90 days prior to the meeting of the legislative body or public hearing at which adoption of the ordinance will be considered. The commissioner shall review the proposed ordinance and advise the municipality if the proposed ordinance would restrict or prohibit the use of best management practices. This subsection does not affect municipal authority to enact ordinances. [1991, c. 395, §2 (rpr).]

5. Complaint resolution. The commissioner shall investigate all complaints involving a farm or farm operation, including, but not limited to, complaints involving the use of waste products, ground and surface water pollution and insect infestations. In cases of insect infestations not arising from agricultural activities, when the State Entomologist believes that the infestation is a public nuisance and is able to identify the source or sources of the infestation, the commissioner shall refer the matter to the Department of the Attorney General. If the commissioner finds upon investigation that the person responsible for the farm or farm operation is using best management practices, the commissioner shall notify that person and the complainant of this finding in writing. Notwithstanding subsection 2-A, paragraph C, if the commissioner identifies the source or sources of the problem and finds that the problem is caused by the use of other than best management practices, the commissioner shall: [1999, c. 723, §2 (amd).]

A. Determine the changes needed in the farm or farm operation to comply with best management practices and prescribe site specific best management practices for that farm operation;
[1997, c. 642, §5 (amd).]

B. Advise the person responsible for the farm or farm operation of the changes, as determined in paragraph A, that are necessary to conform with best management practices and determine subsequently if those changes are implemented; and
[1991, c. 395, §3.]

C. Give the findings of the initial investigation and subsequent investigations and any determination of compliance to the complainant and person responsible.
[1991, c. 395, §3.]

5-A. Good faith. The Maine Rules of Civil Procedure, Rule 11 applies in any private action filed against the owner or operator of a farm or farm operation in which it is alleged that the farm or farm operation constitutes a nuisance if it is determined that the action was not brought in good faith and was frivolous or intended for harassment only. [1999, c. 723, §2.]

6. Failure to adopt best management practices. If the person responsible for the farm or farm operation does not apply best management practices as required by the Commissioner of Agriculture, Food and Rural Resources, the commissioner shall send a written report to an appropriate agency if a federal or state law has been violated and to the Attorney General. The Attorney General may institute an action to abate a nuisance or to enforce the provisions of this section or any other applicable state law, and the court may order the abatement with costs as provided under section 2702, such injunctive relief as provided in this section or by other applicable law, or that a civil violation has been committed. Failure to apply best management practices in accordance with this section constitutes a separate civil violation for which a fine of up to \$1,000, together with an additional fine of up to \$250 per day for every day that the violation continues, may be adjudged. [2003, c. 283, §6 (amd).]

7. Agricultural Complaint Response Fund. There is established the nonlapsing Agricultural Complaint Response Fund. The commissioner may accept funds from any source designated to be placed in the fund. The commissioner may authorize expenses from the fund as necessary to investigate complaints involving a farm or farm operation and to abate conditions potentially resulting from farms or farm operations. [1991, c. 395, §3.]

8. Rules. The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act to interpret and implement this section. [1991, c. 395, §3.]

9. Educational outreach. The Commissioner of Agriculture, Food and Rural Resources shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this section and the currently adopted best management practices of the Department of Agriculture, Food and Rural Resources. The commissioner shall inform the public about the provisions of this section, the complaint resolution process adopted by the department and state policy with respect to preservation and protection of agricultural and natural resources. [1999, c. 723, §2.]

§2806. Sport shooting ranges

1. Acquisition of property near existing range. Except as provided in this subsection, a person may not maintain a nuisance action for noise against a shooting range located in the vicinity of that person's property if the shooting range was established as of the date the person acquired the property. If there is a substantial change in use of the range after the person acquires the property, the person may maintain a nuisance action if the action is brought within 3 years from the beginning of the substantial change.
[1995, c. 231, §1.]

2. Establishment of shooting range near existing property. A person who owns property in the vicinity of

a shooting range that was established after the person acquired the property may maintain a nuisance action for noise against that shooting range only if the action is brought within 5 years after establishment of the range or 3 years after a substantial change in use of the range. [1995, c. 231, §1.]

3. Dormant shooting range. If there has been no shooting activity at a range for a period of 3 years, resumption of shooting is considered establishment of a new shooting range for purposes of this section. [1995, c. 231, §1.]

4. Application. This section does not limit nuisance actions against shooting ranges established after the effective date of this section. [1995, c. 231, §1.]

§2807. Commercial fishing activities and commercial fishing operations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 99, §1.]

A. "Commercial fishing activity" means an activity directly related to commercial fishing or a commercial activity commonly associated with or supportive of commercial fishing, such as the manufacture or sale of ice, bait, traps or nets or the manufacture, installation or repair of boats, engines or other equipment commonly used on boats or in facilities that involve the catching, transporting, buying, selling or processing of seafood for commercial purposes. [2001, c. 99, §1.]

B. "Commercial fishing operation" means a condition or activity that occurs in connection with the commercial harvesting, purchasing, selling or processing of seafood and includes noise, odors, operation of a vessel, operation of harvesting or processing equipment and transfer or storage of bait. [2001, c. 99, §1.]

2. Private nuisance actions limited. A private nuisance action may not be maintained against a person engaged in a commercial fishing activity or commercial fishing operation so long as the activity or operation is undertaken in compliance with applicable licensing and permitting requirements and other applicable statutes, rules and ordinances. [2001, c. 99, §1.]

3. Finfish aquaculture exemption. For purposes of this section, activities and conditions associated with licensed finfish aquaculture are not commercial fishing activities or commercial fishing operations. [2001, c. 99, §1.]

§2851. Dangerous buildings

Whenever the municipal officers in the case of a municipality, or the county commissioners in the case of the unorganized or deorganized areas in their county, find that a building or structure or any portion thereof or any wharf, pier, pilings or any portion thereof that is or was located on or extending from land within the boundaries of the municipality or the unorganized or deorganized area, as measured from low water mark, is structurally unsafe; unstable; unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property, they may after notice and hearing on this matter adjudge the same to be a nuisance or dangerous and may make and record an order prescribing what disposal must be made of that building or structure. [1997, c. 6, §1 (amd).]

1. Notice. The notice must be served on the owner and all parties in interest, as defined in Title 14, section 6321, in the same way service of process is made in accordance with the Maine Rules of Civil Procedure. [1997, c. 6, §1 (amd).]

2. Notice; how published. When the name or address of any owner or co-owner is unknown or is not ascertainable with reasonable diligence, then the notice must be published once a week for 3 successive weeks prior to the date of hearing in a newspaper generally circulated in the county, or if none, in the state paper. [1997, c. 6, §1 (amd).]

3. Order. The order made by the municipal officers or county commissioners must be recorded by the municipal or county clerk, who shall cause an attested copy to be served upon the owner and all parties in interest in the same way service of process is made in accordance with the Maine Rules of Civil Procedure. If the name or address cannot be ascertained, the clerk shall publish a copy of the order in the same manner as provided for notice in subsection 2. [1997, c. 6, §1 (amd).]

4. Proceedings in Superior Court. In addition to proceedings before the municipal officers or the county commissioners, the municipality or the county may seek an order of demolition by filing a complaint in the Superior Court situated in the county where the structure is located. The complaint must identify the location of the property and set forth the reasons why the municipality or the county seeks its removal. Service of the complaint must be made upon the owner and parties-in-interest in accordance with the Maine Rules of Civil Procedure. After hearing before the court sitting without a jury, the court shall issue an appropriate order and, if it requires removal of the structure, it shall award costs as authorized by this subchapter to the municipality or the county. Appeal from a decision of the Superior Court is to the law court in accordance with the Maine Rules of Civil Procedure. [1997, c. 6, §1 (amd).]

§2852. Appeal; hearing

An appeal from a decision of the municipal officers or county commissioners must be to the Superior Court, pursuant to the provisions of the Maine Rules of Civil Procedure, Rule 80B. [1997, c. 6, §2 (amd).]

§2853. Municipal officers may order nuisance abated

If no appeal is filed, the municipal officers of such municipality shall cause said nuisance to be abated or removed in compliance with their order, and all expenses thereof shall be repaid to the municipality by the owner or co-owner within 30 days after demand or a special tax may be assessed by the assessors against the land on which said building was located for the amount of such expenses and such amount shall be included in the next annual warrant to the tax collector of said town for collection, and shall be collected in the same manner as other state, county and municipal taxes are collected. [1967, c. 401, § 2 (amd).]

In the case of any claim for expenses incurred in the abatement or removal of any wharf, pier, pilings or any portion thereof which extends beyond the low water mark, the special tax authorized by this section shall apply to the land from which such wharf, pier or pilings extended or to which they were adjacent, provided the owner of the land is also the owner of the said wharf, pier, pilings or portion thereof. [1973, c. 143, § 2.]

Expenses shall include, but not by way of limitation, the costs of title searches, location reports, service or process, costs of removal of the structure, any costs incurred in securing the structure, pending its removal, and all other costs incurred by the municipality which are reasonably related to the removal of the structure. In addition to levying a special tax, the municipality may recover its expenses, including its reasonable attorney's fees, by means of a civil action brought against the owner. [1979, c. 27, § 5.]

§2856. Securing dangerous structures

In addition to other proceedings authorized by this subchapter, a municipality shall have the right to secure structures which pose a serious threat to the public health and safety and to recover its expenses in so doing as provided in this subchapter. If a building is secured under this section, notice, in accordance with section 2851, subsection 1, shall be given. This notice need not be given before securing the structure if the threat to the public health and safety requires prompt action. [1979, c. 27, § 6.]

§2857. Recording of notice

The municipal clerk shall cause an attested copy of the notice to be recorded in the Registry of Deeds located within the county where the structure is situated. Recording of this notice shall be deemed to put any person claiming under the owner of a structure subject to proceedings under this subchapter on notice of the pendency of the proceedings. [1979, c. 27, § 6.]

§2858. Consent to removal

The owner and parties-in-interest of a dangerous structure may consent to its removal and to the recovery of the expenses incurred by a municipality by means of a special tax as set forth in this subchapter. Notices of the consent shall be recorded in the Registry of Deeds located in the county where the structure is situated. [1979, c. 27, § 6.]

§2859. Summary process

In cases involving an immediate and serious threat to the public health, safety or welfare, in addition to any other remedies, a municipality may obtain an order of demolition by summary process in Superior Court, in accordance with this section. [1981, c. 43.]

1. Commencement of action. A municipality, acting through its building inspector, code enforcement officer, fire chief or municipal officers, shall file a verified complaint setting forth such facts as would justify a conclusion that a building or structure is "dangerous," as that term is defined in section 2851; and shall state therein that the public health, safety or welfare requires the immediate removal of that building or structure. [1981, c. 43.]

2. Order of notice. Whenever a complaint is filed under this section, the justice before whom it is brought, acting ex parte, shall promptly issue an order:

A. Requiring the owner and all parties-in-interest, as that term is defined in the statutes governing foreclosure by civil action, to appear and show cause why the building or structure should not be ordered demolished;

[1981, c. 43.]

B. Specifying the method of service of the order and the complaint;

[1981, c. 43.]

C. Setting a time and place for hearing the complaint, which shall be the earliest possible time but not be later than 10 days from the date of filing; and

[1981, c. 43.]

D. Fixing the time for filing an answer to the complaint if the court determines that an answer is required.

[1981, c. 43.] [1981, c. 43.]

3. Enlargement of time; default. The court may for good cause shown enlarge the time for the hearing. If the owner or parties-in-interest, or any of them, fail to answer, if an answer is required, or fail to appear as directed, or to attend the hearing at the time appointed or as enlarged, the court shall order a default judgment to be entered with respect to the owner or parties-in-interest. [1981, c. 43.]

4. Hearing. After hearing, the court shall enter judgment. If the judgment requires removal of the building or structure, the court shall award costs to the municipality as authorized by this subchapter. The award of costs may be contested and damages sought in a separate action to the extent permitted by subsection 7. [1981, c. 43.]

5. Appeal. No judgment requiring demolition issued pursuant to this section may be appealed. The owner of a building or structure which is the subject of an order issued under this section, or a party-in-interest, may appeal the award of costs, if any, or seek damages for wrongful removal pursuant to subsection 7. [1981, c. 43.]

6. Stay. No judgment authorizing demolition may be stayed pending appeal, unless the court first determines that granting a stay would not pose a significant risk to the public health, safety or welfare. [1981, c. 43.]

7. Damages. Any complaint that either seeks damages for the wrongful removal of a building or structure or challenges the award of costs must be filed no later than 30 days from the date of the judgment or order that is the subject of the appeal. The damages that may be awarded for wrongful demolition are limited to the actual value of the structure at the time of its removal. The provisions of Title 14, section 7552 do not apply. If the municipality should prevail, the court may award it its costs in defending any appeal which may include, but are not limited to, reasonable attorney's fees. [1995, c. 450, §6 (amd).]

TITLE 18-A PROBATE COURT

§5-604. Nomination of public guardian or conservator

(a) Any person who is eligible to petition for appointment of a guardian under section 5-303, subsection (a), 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. [1979, c. 540, §1.]

(b) Any person who is eligible to petition for appointment of a conservator under section 5-404, subsection (a), 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. [1979, c. 540, § 1.]

(c) Except as supplemented by section 5-605, the proceedings for determining the appointment of a public guardian or conservator shall be governed by the provisions of this Article for the appointment of guardians and conservators generally. [1979, c. 540, § 1.]

Section History: PL 1979, Ch. 540, §1 (NEW).

TITLE 20-A EDUCATION

Chapter 223: Health, Nutrition and Safety

§6353. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 661, §8.]

1. Certificate of immunization. "Certificate of immunization" means a written statement from a physician, nurse or health official who has administered an immunizing agent to a child, specifying the dosage administered and the date it was administered. [1983, c. 661, §8.]

2. Child. "Child" means and includes every child entering school. [1983, c. 661, §8.]

3. Disease. "Disease" means those conditions that are preventable by immunizing agent, as specified in

rules. [2001, c. 326, §1 (amd).]

4. Immunizing agent. "Immunizing agent" means a vaccine, antitoxin or other substances used to increase an individual's immunity to a disease. [1983, c. 661, §8.]

5. Parent. "Parent" means a child's parent, legal guardian or custodian. A person shall be regarded as a child's custodian if that person is an adult and has assumed legal charge and care of the child. [1983, c. 661, §8.]

6. Public health official. "Public health official" means a local **health officer**, the Director of the Bureau of Health, Department of Health and Human Services, or any designated employee or agent of the Department of Health and Human Services. [1983, c. 661, §8 (new); 2003, c. 689, Pt. B, §6 (rev).]

7. School. "School" means any public or private elementary or secondary school in the State. [1983, c. 661, §8.]

8. Superintendent. "Superintendent" means the superintendent of schools of a school administrative unit, or a person designated by the superintendent, and the chief administrative officer of a private school. [1983, c. 661, §8.] PL 1983, Ch. 661, §8 (NEW). PL 2001, Ch. 326, §1 (AMD). PL 2003, Ch. 689, §B6 (REV).

§6355. Enrollment in school

A superintendent may not permit any child to be enrolled in or to attend school without a certificate of immunization for each disease or other acceptable evidence of required immunization or immunity against the disease, except as follows. [2001, c. 326, §2 (amd).]

1. Written assurance. The parent provides a written assurance the child will be immunized within 90 days by private effort or provides, where applicable, a written consent to the child's immunization by a health officer, physician, nurse or other authorized person in public or private employ. [1983, c. 661, §8.]

2. Medical exemption. The parent or the child provides a physician's written statement that immunization against one or more of the diseases may be medically inadvisable. [2001, c. 326, §2 (amd).]

3. Philosophical or religious exemption. The parent states in writing a sincere religious belief that is contrary to the immunization requirement of this subchapter or an opposition to the immunization for philosophical reasons. [2001, c. 326, §2 (amd).] PL 1983, Ch. 661, §8 (NEW). PL 2001, Ch. 326, §2 (AMD).

§6356. Exclusion from school

1. Public health official action. When a public health official has reason to believe that the continued presence in a school of a child who has not been immunized against one or more diseases presents a clear danger to the health of others, the public health official shall notify the superintendent of the school. The superintendent shall cause the child to be excluded from school during the period of danger or until the child receives the necessary immunizing agent. [1983, c. 661, § 8.]

Whenever, as a result of this section, a child is absent from the public school for more than 10 days, the superintendent shall make arrangements to meet the educational needs of the child. [1983, c. 661, § 8.]

2. Superintendent's action. Notwithstanding the provisions of this subchapter on immunization against specified diseases, a superintendent may exclude from the public schools any child who is a public health threat, in accordance with section 6301, and the superintendent shall exclude from school any child or employee who has contracted or has been exposed to a communicable disease as directed by a physician after consultation with the Bureau of Health. [1989, c. 414, §11 (amd).] PL 1983, Ch. 661, §8 (NEW). PL 1989, Ch. 414, §11 (AMD).

§6357. Records; report

1. Immunization status of each child based on the certificate of immunization, other acceptable evidence and other available documents. The records shall be part of the child's permanent education records. These records shall be confidential, except that state and local health personnel shall have access to them in connection with an emergency, as provided by the United States Family Educational Rights and Privacy Act of 1974, Public Law 93-380, United States Code, Title 20, Section 1232g(b) (1) (I) and regulations adopted under that Act. [1983, c. 661, §8.]

2. Annual report of immunization status. By December 15th of each year, each superintendent shall submit to the Director of the Bureau of Health, Department of Health and Human Services, and to the commissioner a summary report of immunization status of the children entering school, as prescribed by rule. [1983, c. 661, §8 (new); 2003, c. 689, Pt. B, §6 (rev).] PL 1983, Ch. 661, §8 (NEW). PL 2003, Ch. 689, §B6 (REV).

§6358. Rules; requirements; reports

1. Rules authorized. The commissioner and the Director of the Bureau of Health, Department of Health and Human Services, shall jointly issue rules necessary for the effective implementation of this subchapter, including, but not limited to, rules specifying those diseases for which immunization is required and establishing school record keeping and reporting requirements or guidelines and procedures for the exclusion of nonimmunized children from school. Rules adopted pursuant to this subchapter specifying the diseases for which immunization is required are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 326, §3 (amd); 2003, c. 689, Pt. B, §6 (rev).]

2. Local requirements authorized. Immunization requirements more stringent than the provisions of this subchapter may be adopted by ordinance enacted by a municipality, by regulation of a school board or by policy of a private school's governing board. [1983, c. 661, §8.] PL 1983, Ch. 661, §8 (NEW). PL 2001, Ch. 326, §3 (AMD). PL 2003, Ch. 689, §B6 (REV).

§6359. Immunization of students

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings. [2001, c. 326, §4 (amd); 2003, c. 20, Pt. OO, §2 (amd); §4 (aff); c. 689, Pt. B, §6 (rev).]

A. "Certificate of immunization" means a written statement from a physician, nurse or public health official who has administered an immunizing agent to a student, specifying the dosage administered and the date it was administered.

[1991, c. 146, §1 (amd).]

B. "Chief administrative officer" means the person designated by the legal governing authority as president, administrator or director of a public or private post-secondary school.

[1985, c. 771, §§2, 7.]

C. "Disease" means those conditions that are preventable by immunizing agent, as specified in rules.

[2001, c. 326, §4 (amd).]

D. "Immunizing agent" means a vaccine, toxoid or other substance used to increase an individual's immunity to a disease.

[1991, c. 146, §1 (amd).]

E. "Parent" means a student's parent, legal guardian or custodian. A person shall be regarded as a student's custodian if that person is an adult and has assumed legal charge and care of the student.

[1985, c. 771, §§2, 7.]

F. "Public health official" means the Director of the Bureau of Health or any designated employee or agent of the Department of Health and Human Services.

[1991, c. 146, §1 (amd); 2003, c. 689, Pt. B, §6 (rev).]

G. "School" means any public or private, post-secondary school in the State including, but not limited to colleges, universities, community colleges and schools for the health professions.

[1989, c. 443, §22 (amd); 2003, c. 20, Pt. OO, §2 (amd); §4 (aff).]

G-1. "School health provider" means a physician, physician's assistant, registered nurse or nurse practitioner licensed to practice by the State and appointed by the chief administrative officer to provide health care to the student population.

[1991, c. 146, §2.]

H. "Student" means any person born after 1956 who attends school full time or who is a candidate for a degree, diploma or graduate certificate.

[1987, c. 71 (rpr).]

2. Immunization. Except as otherwise provided under this section, every student shall have administered an adequate dosage of an immunizing agent against each disease as specified by rule. [2001, c. 326, §5 (amd); 2003, c. 689, Pt. B, §6 (rev).]

Any such immunizing agent shall meet standards for the biological products, approved by the United States Public Health Service and the dosage requirement specified by the Department of Health and Human Services. [2001, c. 326, §5 (amd); 2003, c. 689, Pt. B, §6 (rev).]

3. Enrollment of school. No chief administrative officer may permit any student to be enrolled in or to attend school without a certificate of immunization for each disease or other acceptable evidence of required immunization or immunity against the disease, except as follows. [2001, c. 326, §6 (amd).]

A. The parent or the student provides a physician's written statement or a written statement from a school health provider that immunization against one or more of the diseases may be medically inadvisable.

[1991, c. 146, §3 (amd).]

B. The student or the parent, if the student is a minor, states in writing a sincere religious belief, which is contrary to the immunization requirement of this subchapter or an opposition to the immunization for philosophical reasons.

[2001, c. 326, §6 (amd).]

4. Exclusion from school. When a public health official has reason to believe that the continued presence in a school of a student who has not been immunized against one or more diseases presents a clear danger to the health of others, the public health official shall notify the chief administrative officer of the school. The chief administrative officer shall cause the student to be excluded from school during the period of danger or until the student receives the necessary immunizing agent. [1985, c. 771, §§2, 7.]

5. Records; report. Each chief administrative officer shall keep uniform records of the immunizations and immunization status of each student, based on the certificate of immunization, other acceptable evidence and other available documents. The records shall be part of the student's permanent records.

[1985, c. 771, §§2, 7.]

By December 15th of each year, each chief administrative officer shall submit to the Director of the Bureau of Health a summary report of immunization status of the students entering school, as prescribed by rule. A blank summary report form will be provided to each chief administrative officer by the Bureau of Health. [1985, c. 771, §§2, 7.]

6. Rules; requirements; reports. The Director of the Bureau of Health shall adopt rules necessary for the effective implementation of this subchapter, including, but not limited to, rules establishing immunization requirements and medical exceptions to receiving vaccines or toxoids for each disease, school record keeping and reporting requirements or guidelines and procedures for the exclusion of nonimmunized students from school. [1991, c. 146, §4 (amd).]

Immunization requirements more stringent than the provisions of this subchapter may be adopted by a school board or by policy of a private school's governing board. [1991, c. 146, §4 (amd).]

A student who is enrolled in a distance education program offered by a school and who does not physically attend any classes or programs at a school facility, including a campus, center or site of that school, or at a school facility, including a campus, center or site of any other school, is exempt from the provisions of this section. [2001, c. 87, §1.] PL 1985, Ch. 771, §2,7 (NEW). PL 1987, Ch. 71, § (AMD). PL 1989, Ch. 443, §22 (AMD). PL 1991, Ch. 146, §1-4 (AMD). PL 2001, Ch. 87, §1 (AMD). PL 2001, Ch. 326, §4-6 (AMD). PL 2003, Ch. 20, §OO2 (AMD). PL 2003, Ch. 20, §OO4 (AFF). PL 2003, Ch. 689, §B6 (REV).

TITLE 22 GENERAL POWERS AND DUTIES [OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES]

Part 2: State and Local Health Agencies

Chapter 153: Local Health Officers

§451. Appointment

Every municipality in the State shall employ an official who shall be known as the local **health officer** who shall be appointed by the municipal officers of such municipality. The local **health officer** shall be appointed for a term of 3 years and until his successor is appointed, provided that on expiration of the term of office the municipal officers shall appoint a successor within 30 days of such resignation or expiration. The municipal officers or clerk of all municipalities shall within 10 days notify the department in writing of the appointment of a **health officer**, stating the **health officer's** name, age, address and the dates of appointment and beginning of 3-year term. The **health officer** in towns or plantations contiguous to unorganized territory shall perform the duties of **health officer** in such territory. [1981, c. 703, Pt. A, § 7 (amd).]

In the event of incapacity or absence of the local **health officer**, the municipal officers shall appoint a person to act as **health officer** during such incapacity or absence. Failing such appointment, the chairman of the municipal officers shall perform the duties of local **health officer** until the regular **health officer** is returned to duty or appointment of another person has been made.

In municipalities with a manager form of government, when the charter so provides, the appointments provided for in this section may be made by the said manager and the duty prescribed for the chairman of the municipal officers during incapacity or absence of the **health officer** shall be performed by the manager.

In no case shall a person be appointed to hold office as a local **health officer** or as a member of the local board of health who shall have any pecuniary interest, directly or indirectly, in any private sewer corporation over which said officer or board has general supervision.

Health officers may be employed to devote a part or all of their time to the duties of the office. The offices of the local **health officer** and town or school physician shall be combined when, in the opinion of the municipal officers, the health needs of the people would be better served. [1989, c. 487, §3.]

Section History:

PL 1981, Ch. 703, §A7 (AMD). PL 1989, Ch. 487, §3 (AMD).

Chapter 153: Local Health Officers

§451. Appointment

Every municipality in the State shall employ an official who shall be known as the local **health officer** who shall be appointed by the municipal officers of such municipality. The local **health officer** shall be appointed for a term of 3 years and until his successor is appointed, provided that on expiration of the term of office the municipal officers shall appoint a successor within 30 days of such resignation or expiration. The municipal officers or clerk of all municipalities shall within 10 days notify the department in writing of the appointment of a **health officer**, stating the **health officer's** name, age, address and the dates of appointment and beginning of 3-year term. The **health officer** in towns or plantations contiguous to unorganized territory shall perform the duties of **health officer** in such territory. [1981, c. 703, Pt. A, § 7 (amd).]

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Health officers may be employed to devote a part or all of their time to the duties of the office. The offices of the local **health officer** and town or school physician shall be combined when, in the opinion of the municipal officers, the health needs of the people would be better served. [1989, c. 487, §3.] PL 1981, Ch. 703, §A7 (AMD). PL 1989, Ch. 487, §3 (AMD).

§452. Compensation (REPEALED)

PL 1981, Ch. 703, §A8 (RP).

§453. Local board of health

Any municipality may appoint, in addition to the local **health officer**, a board of health consisting of 3 members besides the local **health officer**, one of whom shall be a physician if available in the community, and one a woman. When first appointed members of the board shall be appointed one for one year, one for 2 years and one for 3 years. Subsequent appointments shall be for 3-year terms.

The local **health officer** shall be secretary ex officio of said board and keep a record of all proceedings. The local board of health shall constitute an advisory body to the local **health officer**.

§454. Duties

1. Reporting; action on complaints. In a book kept for that purpose, the local **health officer** shall make and keep a record of all the proceedings, transactions, doings, orders and regulations of that local **health officer**. The local **health officer** shall assist in the reporting, prevention and suppression of diseases and conditions dangerous to health, and that local **health officer** is subject to the supervision and direction of the department. [1997, c. 387, §1 (new); 2003, c. 689, Pt. B, §7 (rev).]

The local **health officer** shall report promptly to the Commissioner of Health and Human Services, or the commissioner's designee, facts that relate to communicable diseases occurring within the limits of the **health officer's** jurisdiction, and shall report to the commissioner, or the commissioner's designee, every case of communicable disease as the rules of the department require. Those diseases that the rules of the department may require to be reported are known, under the terms of this Title, as notifiable diseases. [1997, c. 387, §1 (new); 2003, c. 689, Pt. B, §7 (rev).]

The local **health officer** shall receive and evaluate complaints made by any of the inhabitants concerning nuisances posing a potential public health threat within the limits of the **health officer's** jurisdiction. With the consent of the owner, agent or occupant, the local **health officer** may enter upon or within any place or premises where nuisances or conditions posing a public health threat are known or believed to exist, and personally, or by appointed agents, inspect and examine the same. If entry is refused, the municipal **health officer** shall apply for an inspection warrant from the District Court, pursuant to Title 4, section 179, prior to conducting the inspection. When the local **health officer** has reasonable cause to suspect the presence of a communicable disease, the local **health officer** shall consult with the commissioner, or a designee. The **health officer** shall then order the suppression and removal of nuisances and conditions posing a public health threat found to exist within the limits of the **health officer's** jurisdiction. For purposes of this section, "public health threat" means any condition or behavior that can reasonably be expected to place others at significant risk of exposure to infection with a communicable disease. [1997, c. 387, §1 (new); 2003, c. 689, Pt. B, §7 (rev).]

2. Departmental intervention. If the local **health officer**, or individual designated as the local **health officer** pursuant to section 451, fails to perform the duties of the local **health officer** as those duties are described under this section, the department may intervene to perform those duties. [1997, c. 387, §1.] PL 1987, Ch. 600, § (AMD). PL 1989, Ch. 487, §4 (AMD). PL 1997, Ch. 387, §1 (RPR). PL 2003, Ch. 689, §B7 (REV). §455. Reports (REPEALED)

§459. Providing for free vaccinations

The local **health officer** of each municipality may provide for free vaccinations with suitable material, as defined by the Department of Health and Human Services. Vaccinations and inoculations shall be done under the care of skilled, practicing physicians and under those circumstances and restrictions as the **health officer** may adopt therefor, not contrary to law or in violation of any regulations of the department. [1989, c. 487, §6 (amd); 2003, c. 689, Pt. B, §6 (rev).]

The **health officer** is authorized and empowered to arrange with any available, skilled, practicing physician for the purpose of carrying out this section, and when he deems it necessary for the proper discharge of his duties as outlined in section 454, anything in any city charter to the contrary notwithstanding.

The municipal officers of municipalities may approve and shall pay any reasonable bills or charges incident to the foregoing when approved by the local **health officer**. [1989, c. 487, §7 (amd).]

Nothing in this section is to be interpreted so as to relieve the local **health officer** or any selectman of the duty imposed by section 457.

PL 1975, Ch. 293, §4 (AMD). PL 1981, Ch. 470, §A61 (AMD). PL 1989, Ch. 487, §6,7 (AMD).
PL 2003, Ch. 689, §B6 (REV).

§461. Notice to owner to clean premises; expenses on refusal

The local **health officer**, when satisfied upon due examination, that a cellar, room, tenement or building in the town, occupied as a dwelling place, has become, by reason of want of cleanliness or other cause, unfit for such purpose and a cause of sickness to the occupants or the public, may issue, in consultation with the department, a notice in writing to such occupants, or the owner or the owner's agent, or any one of them, requiring the premises to be put into a proper condition as to cleanliness, or, if they see fit, requiring the occupants to quit the premises within such time as the local **health officer** may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the local **health officer** may cause the premises to be properly cleansed at the expense of the owner, or may close the premises, and the same shall not be again occupied as a dwelling place until put in a proper sanitary condition. If the owner thereafter occupies or knowingly permits the same to be occupied without putting the same in proper sanitary condition, the owner shall forfeit not less than \$10 nor more than \$50 for each day that the premises remain unfit following written notification that the premises are unfit. [1989, c. 487, §9 (amd).] PL 1989, Ch. 487, §9 (AMD).

§462. Assistance if obstructed in duty

Any **health officer** or other person employed by the local **health officer** may, when obstructed in the performance of the person's duty, call for assistance from a law enforcement officer. [1989, c. 487, §10 (amd).] PL 1989, Ch. 487, §10 (AMD).

Chapter 101: General Provisions

§251. Information for department on request

In order to afford the department better advantages for obtaining knowledge important to be incorporated with that collected through special investigations and from other sources, all officers of the State, the physicians of all incorporated companies and the president or agent of any company chartered, organized or transacting business under the laws of this State, as far as practicable, shall furnish to the department any information bearing upon public health which may be requested by said department for the purpose of enabling it better to perform its duties of collecting and distributing useful knowledge on this subject.

§252. Penalties

Whoever willfully violates any provision of section 451, 454, 456, 461 or 462, or of rules adopted pursuant to those sections, or neglects or refuses to obey any order or direction of any local **health officer** authorized by those provisions, the penalty for which is not specifically provided, or willfully interferes with any person or thing to prevent the execution of those sections or of the rules, is guilty of a Class E crime. The District Court shall have jurisdiction of all offenses under these sections. [1989, c. 487, §2 (amd).]

PL 1979, Ch. 127, §141 (AMD). PL 1989, Ch. 487, §2 (AMD).

Chapter 250: Control of Communicable Diseases

§801. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 487, §11.]

1. Commissioner. "Commissioner" means the Commissioner of Health and Human Services. [1989, c. 487, §11 (new); 2003, c. 689, Pt. B, §7 (rev).]
2. Communicable disease. "Communicable disease" means an illness or condition due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host. [1989, c. 487, §11.]
3. Contact notification program. "Contact notification program" means a program coordinated by the department to encourage any person infected with a communicable disease to identify others who may be at risk as a result of contact with the infected person; or to permit the department to notify those persons who may be at risk to inform them of the risk if the infected person refuses to cooperate. [1989, c. 487, §11.]
4. Department. "Department" means the Department of Health and Human Services. [1989, c. 487, §11 (new); 2003, c. 689, Pt. B, §6 (rev).]
- 4-A. (TEXT EFFECTIVE 10/31/05) Extreme public health emergency. "Extreme public health emergency" means the occurrence or imminent threat of widespread exposure to a highly infectious or toxic agent that poses an imminent threat of substantial harm to the population of the State. [2001, c. 694, Pt. B, §1 (new); §6 (aff); 2003, c. 366, §1 (aff).]
- 4-A. (TEXT REPEALED 10/31/05) Extreme public health emergency. [2001, c. 694, Pt. B, §6 (rp); 2003, c. 366, §1 (aff).]
5. Infected person. "Infected person" means a person who is diagnosed as having a communicable disease or who, after appropriate medical evaluation or testing, is determined to harbor an infectious agent. [1989, c. 487, §11.]
6. Municipal **health officer**. "Municipal **health officer**" means a person who is a municipal official appointed pursuant to section 451 and who is authorized by the department to enforce this chapter. [1989, c. 487, §11.]
7. Notifiable disease. "Notifiable disease" means any communicable disease or occupational disease the occurrence or suspected occurrence of which is required to be reported to the department pursuant to sections 821 to 825 or section 1493. [1989, c. 487, §11.]
8. Occupational disease. "Occupational disease" shall have the meaning set forth in section 1491. [1989, c. 487, §11.]
- 8-A. (TEXT EFFECTIVE 10/31/05) Prescribed care. "Prescribed care" means isolation, quarantine, examination, vaccination, medical care or treatment ordered by the department or a court pursuant to section 820. [2001, c. 694, Pt. B, §2 (new); §6 (aff); 2003, c. 366, §1 (aff).]
- 8-A. (TEXT REPEALED 10/31/05) Prescribed care. [2001, c. 694, Pt. B, §6 (rp); 2003, c. 366, §1 (aff).]
9. Property. "Property" means animals, inanimate objects, vessels, public conveyances, buildings and all other real or personal property. [1989, c. 487, §11.]
10. Public health threat. "Public health threat" means any condition or behavior which can reasonably be

expected to place others at significant risk of exposure to infection with a communicable disease. [1989, c. 487, §11.]

A. A condition poses a public health threat if an infectious agent is present in the environment under circumstances which would place persons at significant risk of becoming infected with a communicable disease. [1989, c. 487, §11.]

B. Behavior by an infected person poses a public health threat if:

(1) The infected person engages in behavior that has been demonstrated epidemiologically to create a significant risk of transmission of a communicable disease;

(2) The infected person's past behavior indicates a serious and present danger that the infected person will engage in behavior that creates a significant risk of transmission of a communicable disease to another;

(3) The infected person fails or refuses to cooperate with a departmental contact notification program; or

(4) The infected person fails or refuses to comply with any part of either a cease and desist order or a court order issued to the infected person to prevent transmission of a communicable disease to another.

[1989, c. 487, §11.]

C. Behavior described in paragraph B, subparagraphs (1) and (2), shall not be considered a public health threat if the infected person demonstrates that any other person placed at significant risk of becoming infected with a communicable disease was informed of the risk and consented to it.

[1989, c. 487, §11.] PL 1989, Ch. 487, §11 (NEW). PL 2001, Ch. 694, §B1,2 (AMD). PL 2001, Ch. 694, §B6 (AFF). PL 2003, Ch. 366, §1 (AFF). PL 2003, Ch. 689, §B6,7 (REV)

§802. Authority of department

1. Authority. To carry out this chapter, the department may: [1989, c. 487, §11.]

A. Designate and classify communicable and occupational diseases;

[1989, c. 487, §11.]

B. Establish requirements for reporting and other surveillance methods for measuring the occurrence of communicable diseases, occupational diseases and the potential for epidemics;

[1989, c. 487, §11.]

C. Investigate cases, epidemics and occurrences of communicable and occupational diseases; and

[1989, c. 487, §11.]

D. Establish procedures for the control, detection, prevention and treatment of communicable and occupational diseases, including public immunization and contact notification programs.

[1989, c. 487, §11.]

2. Health emergency. In the event of an actual or threatened epidemic or outbreak of a communicable or occupational disease, the department may declare that a health emergency exists and may adopt emergency rules for the protection of the public health relating to: [1989, c. 487, §11.]

A. Procedures for the isolation and placement of infected persons for purposes of care and treatment or infection control;

[1989, c. 487, §11.]

B. Procedures for the disinfection, seizure or destruction of contaminated property; and

[1989, c. 487, §11.]

C. The establishment of temporary facilities for the care and treatment of infected persons which shall be subject to the supervision and regulations of the department and to the limitations set forth in section 807.

[1989, c. 487, §11.]

2-A. (TEXT EFFECTIVE 10/31/05) Declaration of extreme public health emergency by Governor. The Governor may declare an extreme public health emergency pursuant to this chapter and Title 37-B,

chapter 13, subchapter II. [2001, c. 694, Pt. B, §3 (new); §6 (aff); 2003, c. 366, §1 (aff).]

2-A. (TEXT REPEALED 10/31/05) Declaration of extreme public health emergency by Governor. [2001, c. 694, Pt. B, §6 (rp); 2003, c. 366, §1 (aff).]

3. (TEXT EFFECTIVE 10/31/05) Rules. The department shall adopt rules to carry out its duties as specified in this chapter. The application of rules adopted pursuant to Title 5, section 8052 to implement section 820 must be limited to periods of an extreme public health emergency. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 694, Pt. B, §4 (rpr); §6 (aff); 2003, c. 366, §1 (aff).]

3. (TEXT EFFECTIVE 10/31/05) Rules. The department may promulgate rules to carry out its duties as specified in this section. Rules shall be adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1989, c. 487, §11.]

4. Immunization required. [2001, c. 185, §1 (rp).]

4-A. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 185, §2.]

A. "Designated health care facility" means a licensed nursing facility, residential care facility, intermediate care facility for the mentally retarded, multi-level health care facility, hospital or home health agency. [2001, c. 185, §2.]

B. "Disease" means one of those conditions enumerated in rules adopted by the department that may be preventable by an immunizing agent. [2001, c. 185, §2.]

C. "Employee" means any person who performs a service for wages or other remuneration for a designated health care facility. [2001, c. 185, §2.]

D. "Immunizing agent" means a vaccine, antitoxin or other substance used to increase an individual's immunity to a disease. [2001, c. 185, §2.]

4-B. Exemptions to immunization. Employees are exempt from immunization otherwise required by this subchapter or by rules adopted by the department pursuant to this section under the following circumstances. [2001, c. 185, §2.]

A. A medical exemption is available to an employee who provides a physician's written statement that immunization against one or more diseases may be medically inadvisable. [2001, c. 185, §2.]

B. A religious or philosophical exemption is available to an employee who states in writing a sincere religious or philosophical belief that is contrary to the immunization requirement of this subchapter. [2001, c. 185, §2.]

C. An exemption is available to an individual who declines hepatitis B vaccine, as provided for by the relevant law and regulations of the federal Department of Labor, Occupational Health and Safety Administration. [2001, c. 185, §2.]

5. Immunization requirements for nursing facility staff. A nursing facility or licensed assisted living facility shall adopt a facility policy that recommends and offers annual immunizations against influenza to all personnel who provide direct care to residents of the facility. [1999, c. 378, §2.]

PL 1989, Ch. 487, §11 (NEW). PL 1999, Ch. 378, §1,2 (AMD). PL 2001, Ch. 185, §1,2 (AMD).

PL 2001, Ch. 694, §B3,4 (AMD). PL 2001, Ch. 694, §B6 (AFF). PL 2003, Ch. 366, §1 (AFF).

§803. Inspection

If the department has reasonable grounds to believe that there exists, on public or private property, any communicable disease which presents a public health threat, a duly authorized agent of the department may enter any place, building, vessel, aircraft or common carrier with the permission of the owner, agent or occupant where the communicable disease is reasonably believed to exist and may inspect and examine the same. If entry is refused, that agent shall apply for an inspection warrant from the District Court pursuant to Title 4, section 179, prior to conducting the inspection. [1989, c. 487, §11.] PL 1989, Ch. 487, §11 (NEW).

§804. Penalties

1. Rules enforced. All agents of the department, municipal **health officers**, sheriffs, state and local law enforcement officers and other officials designated by the department shall enforce the rules of the department made pursuant to section 802 to the extent that enforcement is authorized in those rules. [1989, c. 487, §11.]

2. Refusal to obey rules. Any person who neglects, violates or refuses to obey the rules or who willfully obstructs or hinders the execution of the rules, may be ordered by the department, in writing, to cease and desist. This order shall not be considered an adjudicatory proceeding within the meaning of the Maine Administrative Procedure Act, Title 5, chapter 375. In the case of any person who refuses to obey a cease and desist order issued to enforce the rules adopted pursuant to section 802, the department may bring an action in District Court to obtain an injunction enforcing the cease and desist order or to request a civil fine not to exceed \$500, or both. Alternatively, the department may seek relief pursuant to section 810 or 812. The District Court shall have jurisdiction to determine the validity of the cease and desist order whenever an action for injunctive relief or civil penalty is brought before it under this subsection. [1989, c. 487, §11.]

PL 1989, Ch. 487, §11 (NEW).

Subchapter 2-A: Extreme Public Health Emergencies

§820. Extreme public health emergency

(WHOLE SECTION TEXT EFFECTIVE 10/31/05)

The provisions of this subchapter apply in the event of the declaration of an extreme public health emergency pursuant to section 802, subsection 2-A and Title 37-B, chapter 13, subchapter II. [2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

1. Powers of the department. Upon the declaration of an extreme public health emergency, the department has the following powers. [2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

A. Upon request of the department, a medical provider, pharmacist or veterinarian shall provide to the department health information directly related to a declared extreme public health emergency. [2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

B. The department may take a person into custody and order prescribed care of that person as provided in this subsection.

(1) The department may act without a court order if:

(a) The department has reasonable cause to believe that the person has been exposed to or is at significant medical risk of transmitting a communicable disease that poses a serious and imminent risk to public health and safety;

(b) There are no less restrictive alternatives available to protect the public health and safety; and

(c) The delay involved in securing a court order would pose an imminent risk to the person or a significant medical risk of transmission of the disease.

(2) The department may act pursuant to a court order obtained under subsection 2.

(3) A person is exempt from examination, vaccination, medical care or treatment if alternative public health measures are available, even if those measures are more restrictive, and if:

(a) The person demonstrates a sincere religious or conscientious objection to the examination, vaccination, medical care or treatment; or

(b) The person is at known risk of serious adverse medical reaction to the vaccination or medical care or treatment. [2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

2. Judicial review. The following provisions apply to judicial review of the authority of the department under this subchapter. [2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

A. A hearing must be held before a judge of the District Court, a justice of the Superior Court or a justice of the Supreme Judicial Court as soon as reasonably possible but not later than 48 hours after the person is subject to prescribed care to determine whether the person must remain subject to prescribed care. A hearing under this paragraph may be waived in writing after notice of the effect of a waiver and an opportunity to consult with an attorney.

[2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

B. Notice of the hearing must be served upon the person subject to prescribed care within a reasonable time before the hearing. The notice must specify: the time, date and place of the hearing; the grounds and underlying facts upon which the prescribed care is sought; the right to appear at the hearing, either in person, by electronic means or by representation, and to present and cross-examine witnesses; and the right to counsel.

[2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

C. For a court to order prescribed care, the department must prove by clear and convincing evidence that:

(1) The person has been exposed to or is at significant medical risk of transmitting a communicable disease that poses a serious imminent risk to public health or safety; and

(2) There are no less restrictive alternatives available to protect the public health and safety.

[2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

D. Within 24 hours of completion of the hearing, the court shall enter a finding approving prescribed care and shall issue an order of prescribed care for a period not to exceed 30 days or shall dismiss the petition and order the person released from prescribed care immediately.

[2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

E. If the department determines that it is necessary to continue an order obtained under this subsection, the department shall petition the court that issued the order. The court shall hold a hearing in accordance with paragraphs B, C and D and shall make such orders as the court determines necessary, except that an order may not exceed 30 days in duration without further review by the court. [2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

F. The court may order applications under this section to be joined.

[2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

3. Appeal. A person aggrieved by a court order issued under subsection 2 may appeal from that order to the Supreme Judicial Court. The order remains in effect pending appeal. Any findings of fact may not be set aside unless clearly erroneous. Pursuant to order of court, appeals under this section may be joined. The Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

4. Medical-legal advisory panel. The commissioner shall establish an ongoing medical-legal advisory panel consisting of not more than 3 members who have expertise in either medicine or public health law. Membership on the panel must be planned to ensure that at least one member has expertise in medicine

and at least one member has expertise in public health law. The panel shall provide advice concerning extreme public health emergencies. Upon the declaration of an extreme public health emergency, as soon as practicable the commissioner shall convene the panel, either in person or by electronic means, to further advise the Governor on the extreme public health emergency. [2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

5. Interpretation. The provisions of sections 817, 818, 819 and 824 must be interpreted to apply to this subchapter to the extent not inconsistent with this subchapter. [2001, c. 694, Pt. A, §1 (new); Pt. B, §6 (aff); 2003, c. 366, §1 (aff).]

§821. Authority of department

The department shall adopt rules pursuant to section 802 and establish procedures to carry out the rules to provide a uniform system of reporting, recording and collecting information and maintaining confidentiality concerning communicable diseases. The department may designate any communicable disease as a notifiable disease. Any notifiable disease shall be reported to the department in accordance with this subchapter and the rules established by the department. [1989, c. 487, §11.] PL 1989, Ch. 487, §11 (NEW).

§822. Reporting

Whenever any physician knows or has reason to believe that any person whom the physician examines or cares for has or is afflicted with any communicable disease designated as notifiable, that physician shall notify the department and make such a report as may be required by the rules of the department. Reports shall be in the form and content prescribed by the department and the department shall provide forms for making required reports. [1989, c. 487, §11.] PL 1989, Ch. 487, §11 (NEW).

§823. Time requirements

The reporting of a notifiable disease shall be made by telephone to the department immediately upon determination that a person has that disease and shall be followed by a written report mailed to the department within 48 hours. [1989, c. 487, §11.] PL 1989, Ch. 487, §11 (NEW).

§824. Confidentiality

Any person who receives information pursuant to this chapter shall treat as confidential the names of individuals having or suspected of having a notifiable communicable disease, as well as any other information that may identify those individuals. This information may be released to the department for adult or child protection purposes in accordance with chapters 958-A and 1071, or to other public health officials, agents or agencies or to officials of a school where a child is enrolled, for public health purposes, but that release of information must be made in accordance with Title 5, chapter 501, where applicable. In a public health emergency, as declared by the state **health officer**, the information may also be released to private health care providers and agencies for the purpose of preventing further disease transmission. All information submitted pursuant to this chapter that does not name or otherwise identify individuals having or suspected of having a notifiable communicable disease may be made available to the public. [1989, c. 487, §11.]

Any person receiving a disclosure of identifying information pursuant to this chapter may not further disclose this information without the consent of the infected person. [1989, c. 487, §11.] PL 1989, Ch. 487, §11 (NEW).

§825. Penalties

Any person who knowingly and willfully fails to comply with reporting requirements for notifiable diseases commits a civil violation for which a forfeiture of not more than \$250 may be adjudged. A person who knowingly or recklessly makes a false report under section 822 or who knowingly violates section 824, is civilly liable for actual damages suffered by a person reported upon and for punitive damages and commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. [1989, c. 487, §11.] PL 1989, Ch. 487, §11 (NEW).

Subchapter 2-A: Immunization

§1061. Definitions

1. Clinic. "Clinic," as used in this subchapter, shall mean any place, establishment or institution which operates for the purpose of dispensing immunizing agents to persons who are not confined in that place. [1977, c. 304, § 2.]
2. Immunizing agent. "Immunizing agent" means a vaccine, antitoxin or other substance used to increase an individual's immunity to a disease. [1977, c. 304, § 2.]
PL 1977, Ch. 304, §2 (NEW).

§1062. Distribution of immunizing agents

The department shall have authority to purchase or receive by gift and dispense immunizing agents and other pharmaceuticals for use in the prevention and control of diseases and disabilities. The department shall provide and distribute immunizing agents throughout the State when necessary to protect the public health. [1977, c. 304, § 2.] PL 1977, Ch. 304, §2 (NEW).

§1063. Clinics

1. Immunization; immunity from liability. The department may offer immunization to the public for protection in case of an epidemic or threatened epidemic as ordered by the commissioner. Notwithstanding any inconsistent provision of any other law, no person who works as a volunteer in a public immunization program set up by the department pursuant to this subsection, without the expectation or receipt of monetary compensation for any aspect of such a program, shall be liable:
 - A. For damages or injuries alleged to have been sustained by a person immunized under the program; nor
[1977, c. 304, § 2.]
 - B. For damages for the death of a person immunized under the program, unless it is established that the injuries or the death were caused willfully, wantonly, recklessly or by gross negligence by the volunteer.
[1977, c. 304, § 2.] [1977, c. 304, § 2.]
2. Free immunization clinics. The department may conduct free immunization clinics for the public subject to whatever guidelines and regulations the department deems necessary. The department shall notify the public of the free immunization clinics, publicize the time and place of the clinic and require that a record be kept of those immunized. [1977, c. 304, § 2.]
3. Municipal immunization programs. The department may cooperate with the local **health officer** of a municipality offering immunization to or conducting free clinics for persons within its jurisdiction. Municipal immunization programs shall be subject to whatever guidelines and regulations the department deems necessary. [1977, c. 304, § 2.] PL 1977, Ch. 304, §2 (NEW).

§1064. Immunization information system

The department shall establish an immunization information system and require all immunization providers who participate in the department's immunization distribution system to submit to the department a record of each immunization administered. [1997, c. 670, §1.]

The department shall adopt rules to implement this section. The rules must include, but are not limited to, provisions for: permitting a person or the parent or guardian of that person to choose not to be included in the system; the format for reporting information; the confidentiality of information in the system; penalties for unauthorized disclosure of information; immunity for good-faith disclosure of information; data transmission; and the confidentiality of information of persons who have chosen not to be included in the system, except that the department may have access to this information to control an outbreak of a disease preventable by immunization. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 670, §1.]

The department may establish an immunization system. The department must pursue federal funding to support the cost of the information system. Any state match required to secure federal funding must be made available from existing budget resources. [1997, c. 670, §1.]

PL 1997, Ch. 670, §1 (NEW).

Subchapter 5: Rabies or Hydrophobia

§1311. Killing or impounding of dogs

The department may, in the case of an emergency or threatened epidemic of rabies or hydrophobia when in its opinion the health and safety of the people in a community are endangered, issue orders to the mayor of any city or the municipal officers of any town or plantation to have killed any dogs found loose in violation of quarantine regulations and impounded for a period of 72 hours without being claimed by their owner.

The mayor of any city or the municipal officers of any town or plantation shall forthwith direct that such dogs be killed by a police officer or constable.

§1313. Procedures for the transportation, quarantine, euthanasia and testing of animals suspected of having rabies

1. Establishment of procedures. The commissioner, in consultation with the Commissioner of Agriculture, Food and Rural Resources and the Commissioner of Inland Fisheries and Wildlife shall adopt rules, in accordance with the Maine Administrative Procedure Act, establishing procedures for responding to a report of an animal suspected of having rabies. The procedures must include provisions for the transportation, quarantine, euthanasia and testing of an animal suspected of having rabies and, when that animal has bitten a person, provisions for the notification of the animal control officer in the locality where the bite occurred. The procedures may differ based on the perceived public health threat determined in part by consideration of the following factors: [1999, c. 350, §3 (amd).]

A. Whether the animal is a domesticated animal for which a known effective vaccine exists and, if so, can the animal's vaccination status be verified; and [1993, c. 468, §23.]

B. Whether the animal has bitten a person or exhibited other aggressive behavior.

[1993, c. 468, §23.]

2. Role of animal control officer; game warden. An animal control officer appointed in accordance with Title 7, section 3947, receiving a report of an animal suspected of having rabies shall ensure that the procedures established pursuant to this section and section 1313-A are carried out. If the animal is an undomesticated animal, a game warden shall assist the animal control officer. [1993, c. 468, §23.]

3. Costs associated with transportation, quarantine, testing and euthanasia. The Department of Inland Fisheries and Wildlife shall provide for or pay all necessary costs for transportation and euthanasia of an undomesticated animal suspected of having rabies. The owner of a domesticated animal suspected of having rabies shall pay all costs for transportation, quarantine, euthanasia and testing of the animal. If a

domesticated animal is a stray or the owner is unknown, the municipality in which the animal was apprehended is responsible for transportation, quarantine, euthanasia and testing costs. Cost of testing animals judged by the department to have created a public health risk of rabies must be borne by the department, through its General Fund appropriations. [1999, c. 731, Pt. Q, §1 (amd).] PL 1993, Ch. 468, §23 (NEW). PL 1999, Ch. 350, §3 (AMD). PL 1999, Ch. 731, §Q1 (AMD).

§1313-A. Provisions for immediate destruction of certain animals

If an undomesticated animal or a wolf hybrid suspected of having rabies bites or otherwise exposes to rabies a person or a domestic animal, an animal control officer, a local **health officer** or a game warden must immediately remove the undomesticated animal or wolf hybrid or cause the undomesticated animal or wolf hybrid to be removed and euthanized for testing. When in the judgment of the animal control officer, local **health officer**, game warden or law enforcement officer the animal poses an immediate threat to a person or domestic animal, the animal control officer, local **health officer**, game warden or law enforcement officer may immediately kill or order killed that animal without destroying the head. The Department of Inland Fisheries and Wildlife shall arrange for the transportation of the head to the State Health and Environmental Testing Laboratory; except that the animal control officer shall make the arrangements if the animal is a wolf hybrid. [1997, c. 704, §11 (amd).]

The Department of Inland Fisheries and Wildlife shall pay transportation and testing costs for undomesticated animals. The owner of a domesticated ferret, domesticated wolf or domesticated wolf hybrid shall pay transportation and testing costs for that animal. [1993, c. 468, §23.] PL 1993, Ch. 468, §23 (NEW). PL 1997, Ch. 704, §11 (AMD).

§1313-B. Civil violation, court authorization for removal and other remedies

1. Violation. A person who violates a rule established under this chapter commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged for each offense. In addition, the court may include an order of restitution as part of the sentencing for costs including removing, controlling and confining the animal. [1997, c. 704, §12.]

2. Court authorization for removal. When home quarantine procedures, as described on the official notice of quarantine, have been violated, or in the case of a wolf hybrid, when the owner fails to bring the animal to a veterinarian for euthanasia and testing or to turn the animal over to authorities as required by rules established pursuant to this chapter, an animal control officer, person acting in that capacity or law enforcement officer may apply to the District Court or Superior Court for authorization to take possession of the animal for placement, at the owner's expense, in a veterinary hospital, boarding kennel or other suitable location for the remainder of the quarantine period or, in the case of a wolf hybrid, removal for euthanasia. At the end of the quarantine period for domestic animals, or if the animal shows signs of rabies, the person in possession of the animal must report to the court, and the court shall either dissolve the possession order or order the animal euthanized and tested for rabies. [1997, c. 704, §12.]

3. Other remedies. In addition to filing a civil action to enforce this section: [1997, c. 704, §12.]

A. The municipality may record a lien against the property of the owner or keeper of an animal if the person fails or refuses to comply with an order to confine or quarantine the animal; [1997, c. 704, §12.]

B. The municipal officers or their designated agent, such as the animal control officer, shall serve written notice on the owner or keeper of the animal that specifies the action necessary to comply with the order and the time limit for compliance; [1997, c. 704, §12.]

C. If the owner or keeper of the animal fails to comply within the time stated, the animal control officer

must apply to District Court or Superior Court for an order to seize the animal and make arrangements for quarantine or euthanasia at the owner's or keeper's expense; and [1997, c. 704, §12.]

D. If the owner or keeper of the animal fails to pay the costs of confinement or quarantine within 30 days after written demand from the municipal officers, the municipal assessors may file a record of lien against the property of the owner or keeper of the animal. [1997, c. 704, §12.] PL 1997, Ch. 704, §12 (NEW).

Chapter 263: Offenses Against Public Health

Subchapter 1: Nuisances

§1561. Removal of private nuisance

When any source of filth whether or not the cause of sickness is found on private property and deemed to be potentially injurious to health, the owner or occupant thereof shall, within 24 hours after notice from the local **health officer**, at his own expense, remove or discontinue it. If he neglects or unreasonably delays to do so, he forfeits not exceeding \$300. Said local **health officer** shall cause said nuisance to be removed or discontinued, and all expenses thereof shall be repaid to the town by such owner or occupant, or by the person who caused or permitted it. [1973, c. 430 (amd).]

§1562. Depositing of dead animal where nuisance

Whoever personally or through the agency of another leaves or deposits the carcass of a dead horse, cow, sheep, hog or of any domestic animals or domestic fowl or parts thereof in any place where it may cause a nuisance shall, upon receiving a notice to that effect from the local **health officer**, promptly remove, bury or otherwise dispose of such carcass. If he fails to do so within such time as may be prescribed by the local **health officer**, and in such manner as may be satisfactory to such **health officer**, he shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 3 months.

Chapter 403: Town Hospitals

§1762. Temporary facilities

Notwithstanding the provisions of section 1761, in the event of an outbreak of any disease or health problem dangerous to the public health, the municipal officers or local **health officer**, with the approval of the department, may establish temporary health care facilities, subject to the supervision of the department. [1977, c. 696, § 187 (reen).]

§1444. Control of browntail moths

1. Declaration of public health nuisance. The Director of the Bureau of Health may declare that an infestation of browntail moths is a public health nuisance. The declaration may be made on the director's own initiative or on petition to the director by municipal officers in a municipality affected by the infestation. [1997, c. 215, §1.]

2. Aerial spraying. When the infestation causing a public health nuisance may be controlled by the aerial spraying of pesticides, the municipal officers in the affected municipality may conduct aerial spraying subject to rules adopted by the Board of Pesticides Control, pursuant to Title 22, section 1471-R, subsection 3, paragraph C, except that:

A. The municipality rather than the applicator is responsible for compliance with the notification and consent regulations; [1997, c. 215, §1.]

B. Landowners who are sent written notification by mail, sent to the landowner's last known address as contained in the municipal assessing records and who fail to respond to the notice within 30 days are deemed to have consented to aerial spraying; [1997, c. 215, §1.]

- C. A landowner's written consent to spray remains valid unless the municipal officers are notified in writing at least 90 days before spraying is to occur that:
- (1) The landowner withdraws consent; or
 - (2) Ownership of the property has been transferred and the notice contains the name and mailing address of the new owner; [1997, c. 215, §1.]
- D. Any such notice sent or consent received in calendar year 1997 prior to the effective date of this chapter constitutes adequate notice or consent under the law; [1997, c. 215, §1.]
- E. Written notice to the landowners must identify the chemicals to be used in the aerial spraying; and [1997, c. 215, §1.]
- F. Public notice of the date of the aerial spraying, subject to change because of weather conditions, must be given 24 hours prior to the spraying. [1997, c. 215, §1.]
- [1997, c. 215, §1.]

3. Refusal to consent; cost of extermination. After the declaration of the Director of the Bureau of Health and a written declaration by the municipal officers of their intent to conduct aerial spraying, any landowner who refuses to consent to aerial spraying shall remove any browntail moth infestation from that landowner's property at that landowner's expense in a time and manner satisfactory to the local **health officer**. Regardless of whether the nonconsenting landowner's property has an infestation of moths, the nonconsenting landowner is also liable for the additional expenses actually incurred by neighboring consenting landowners or the municipality when neighboring consenting landowners or the municipality uses a method of removal other than aerial spraying due to lack of consent. In such cases, consenting landowners shall remove any browntail moth infestation from their own property at their own initial expense in a time and manner satisfactory to the local **health officer**.

All additional expenses incurred by a municipality must be repaid to the municipality within 30 days after written demand mailed to the nonconsenting landowner by the municipal officers. If the written demand is not met, a service charge may be assessed by the municipal officers against the land of the nonconsenting landowner for the amount of those expenses. The service charge must be collected in the same manner as municipal sewer service charges are collected pursuant to Title 30-A, section 3406.

All additional expenses incurred by neighboring consenting landowners may be collected by the municipality from nonconsenting landowners as a service charge described in this subsection, following certification in writing by the consenting landowners to the municipal officers of the additional costs. The municipal officers shall make suitable provisions to reimburse the consenting landowners from the amounts collected. [1997, c. 215, §1.]

Chapter 601: Water For Human Consumption

§2601-A. Scope

This chapter establishes a system designed to help ensure public health; to allow the State, municipalities and public water systems to identify significant public water supplies and strive for a higher degree of protection around source water areas or areas that are used as public drinking water supplies; and to allow the State, municipalities and water systems to pursue watershed or wellhead protection activities around significant public water supplies. [1999, c. 761, §1.]

§2608. Information on private water supply contamination; interagency cooperation

1. Information on private water supply contamination. The department shall provide information and consultation to citizens who: [1983, c. 837, §2.]

- A. Make reports of potential contamination of private water supplies; and [1983, c. 837, §2.]
- B. Request information on potential ground water contamination at or near the site of a private water

supply. [1983, c. 837, §2.]

2. Interagency cooperation. The department shall coordinate with the Department of Environmental Protection for the purposes of: [1983, c. 837, §2.]

A. Assessing the public health implications of reports or requests made by citizens in subsection 1; and [1983, c. 837, §2.]

B. Determining the appropriate response to those reports or requests, including, but not limited to, on-site investigation, well water testing and ground water monitoring. [1983, c. 837, §2.]

3. Cooperation with local **health officer**. The department and the Department of Environmental Protection, to the extent possible, shall notify and utilize the services of local **health officers** in collecting and evaluating information relating to actual or potential ground water contamination. [1983, c. 837, §2.]

§2615. Notification of noncompliance to regulatory agencies and users

1. Notification. A public water system shall notify the public of the nature and extent of possible health effects as soon as practicable, but not later than the time period established under subsection 4, if the system: [2001, c. 574, §14 (amd).]

A. Is not in compliance with a state drinking water rule; [1995, c. 622, §5 (rpr).]

B. Fails to perform monitoring, testing or analyzing or fails to provide samples as required by departmental rules; [1995, c. 622, §5 (rpr).]

C. Is subject to a variance or an exemption granted under section 2613; or [1995, c. 622, §5 (rpr).]

D. Is not in compliance with the terms of a variance or an exemption granted under section 2613. [1995, c. 622, §5 (rpr).]

E. Public notification under this section must be provided concurrently to the system's local **health officer** and to the department. When required by law, the department shall forward a copy of the notification to the Administrator of the United States Environmental Protection Agency. The department may require notification to a public water system's individual customers by mail delivery or by hand delivery within a reasonable time, but not earlier than required under federal laws. [2001, c. 574, §14 (amd).]

2. Certain uses of notification prohibited. Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any person or system providing such notice in any criminal case, except for prosecutions for perjury or the giving of a false statement. [1975, c. 751, §4.]

3. Form of notification. In addition to the notification required under subsection 1, a public water system shall provide public notification pursuant to the requirements in 40 Code of Federal Regulations, Parts 141 to 143 (2001). [2001, c. 574, §15 (amd).]

4. Additional time of notification. A public water system shall provide public notification pursuant to subsection 3: [2001, c. 574, §15 (amd).]

A. When a boil-water order is properly issued to a public water system under section 2614, subsection 3, within 24 hours. [2001, c. 574, §15 (amd).]

5. Rulemaking. The commissioner shall adopt rules establishing the procedures for the provision of public notification as required to comply with state and federal laws. Rules adopted pursuant to this section are minor technical rules as defined in Title 5, chapter 375, subchapter II-A. [1995, c. 622, §6.]

§2615-A. Consumer confidence reports

1. Annual reports to customers. The commissioner shall require each community water system, as defined in section 2660-B, subsection 2, to prepare and provide to each customer of the system at least

once annually a consumer confidence report, which must include, but is not limited to, the source of drinking water and potential contamination sources, the level of detected regulated contaminants and detected unregulated contaminants for which monitoring is required by the primacy agency, the health risks associated with detected contaminants, the status and notice of public input in the renewal of variances or exemptions, the nature of applicable compliance violations, including remedial action, and access to additional information from the community water system and the United States Environmental Protection Agency's safe drinking water hotline. [1999, c. 77, §1.]

2. Reports to State. Each community water system shall mail to the department a copy of the consumer confidence report and a signed certification that the report is accurate and was delivered to each customer of the system. [1999, c. 77, §1.]

3. Delivery to customers. Each community water system shall mail a copy of the consumer confidence report to each customer of the system. The Governor may waive the mailing requirement for community water systems serving fewer than 10,000 persons and require those systems to publish the consumer confidence report in a newspaper of general circulation to inform customers that the report will not be mailed and to make the report available upon request. If the Governor waives the mailing requirement for systems serving fewer than 10,000 persons, community water systems serving 500 or fewer persons have the option of posting the consumer confidence report in an appropriate public location. [1999, c. 77, §1.]

Each community water system serving 100,000 or more persons shall also post its current year's report to a publicly accessible site on the Internet. [1999, c. 77, §1.]

4. Rulemaking. The commissioner shall adopt rules establishing the requirements with respect to the form, content and delivery of consumer confidence reports under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1999, c. 77, §1.]

TITLE 30-A MUNICIPALITIES AND COUNTIES

Chapter 13: County Jails and Jailers

§1560. Removal for disease

The removal of prisoners afflicted with dangerous diseases is governed as follows. [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).]

1. Removal. If a prisoner in a jail is afflicted with a disease which the local **health officer**, by medical advice, considers dangerous to the safety and health of other prisoners or of the inhabitants of the municipality, the local **health officer** shall, by written order, direct the person's removal to some place of safety, to be securely kept and provided for until the officer's further order. [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).]

2. Return. Upon recovering from the disease, the prisoner shall be returned to the place of confinement. [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).]

3. Removal not escape. A removal under this section is not an escape. [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).]

4. Notice. If the diseased person was committed to the place of confinement by an order of court or judicial process, the local **health officer** shall send the following to the office of the clerk of court from which the order or process was issued:

A. The order for the diseased person's removal or a copy of the order attested by the local **health officer** ; and [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).]

B. A statement describing the actions taken under the order. [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).] [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).]

Section History: PL 1987, Ch. 737, §A2,C106 (NEW). PL 1989, Ch. 6, § (AMD). PL 1989, Ch. 9, §2 (AMD). PL 1989, Ch. 104, §C8,10 (AMD).

Chapter 159: Public Dumps

§3352. Prohibited dumping

1. Prohibited dumping. Notwithstanding Title 17-A, section 4-A, whoever personally or through the agency of another leaves or deposits any offal, filth or other noisome substance in any public dumping ground, except in the manner prescribed by the local **health officer** , is guilty of a Class E crime and shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 3 months. [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).]

2. Civil action. A municipality may recover any expenses incurred in abating the nuisance caused by the violation in a civil action brought in the name of the municipality against the guilty party. If requested and the violation merits it, the court in its discretion may award double damages in the action. [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).] PL 1987, Ch. 737, §A2,C106 (NEW). PL 1989, Ch. 6, § (AMD). PL 1989, Ch. 9, §2 (AMD). PL 1989, Ch. 104, §C8,10 (AMD).

§4452. Enforcement of land use laws and ordinances

1. Enforcement. A municipal official, such as a municipal code enforcement officer, local plumbing inspector or building inspector, who is designated by ordinance or law with the responsibility to enforce a particular law or ordinance set forth in subsection 5, 6 or 7, may: [1993, c. 23, §1 (amd).]

A. Enter any property at reasonable hours or enter any building with the consent of the owner, occupant or agent to inspect the property or building for compliance with the laws or ordinances set forth in subsection 5. A municipal official's entry onto property under this paragraph is not a trespass; [1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

B. Issue a summons to any person who violates a law or ordinance, which the official is authorized to enforce; and [1993, c. 23, §1 (amd).]

C. When specifically authorized by the municipal officers, represent the municipality in District Court in the prosecution of alleged violations of ordinances or laws, which the official is authorized to enforce. [1993, c. 23, §1 (amd).]

2. Liability for violations. Any person, including, but not limited to, a landowner, the landowner's agent or a contractor, who

violates any of the laws or ordinances set forth in subsection 5 or 6 is liable for the penalties set forth in subsection 3. [1991, c.

732, §2 (amd).]

3. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5. Except for

paragraph H, monetary penalties may be assessed on a per-day basis and are civil penalties. [1999, c. 370, §1 (amd).]

A. The minimum penalty for starting construction or undertaking a land use activity without a required permit is \$100, and the maximum penalty is \$2,500.

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

B. The minimum penalty for a specific violation is \$100, and the maximum penalty is \$2,500.

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

B-1. Notwithstanding paragraph B, the maximum penalty is \$5,000 for any violation of a law or an ordinance set forth in subsection

5, paragraph Q, if the violation occurs within an area zoned for resource protection.

[1999, c. 370, §1 (new).]

C. The violator may be ordered to correct or abate the violations. When the court finds that the violation was willful, the violator

shall be ordered to correct or abate the violation unless the abatement or correction results in:

(1) A threat or hazard to public health or safety;

(2) Substantial environmental damage; or

(3) A substantial injustice.

[1989, c. 727, §1 (amd).]

C-1. Notwithstanding paragraph C, for violations of the laws and ordinances set forth in subsection 5, paragraph Q, the violator shall

be ordered to correct or mitigate the violation unless the correction or mitigation results in:

(1) A threat or hazard to public health or safety;

(2) Substantial environmental damage; or

(3) A substantial injustice.

[1989, c. 727, §1 (new).]

D. If the municipality is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees and

costs, unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the

prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees and costs as provided by court rule.

[1989, c. 727, §1 (amd).]

E. In setting a penalty, the court shall consider, but is not limited to, the following:

(1) Prior violations by the same party;

(2) The degree of environmental damage that cannot be abated or corrected;

(3) The extent to which the violation continued following a municipal order to stop; and

(4) The extent to which the municipality contributed to the violation by providing the violator with incorrect information or by

failing to take timely action.

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

F. The maximum penalty may exceed \$2,500, but may not exceed \$25,000, when it is shown that there has been a previous

conviction of the same party within the past 2 years for a violation of the same law or ordinance.

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

G. The penalties for violations of a septage land disposal or storage site permit issued by the Department of Environmental Protection under Title 38, chapter 13, subchapter 1, are as prescribed in Title 38, section 349.

[1997, c. 794, Pt. A, §1 (amd).]

H. If the economic benefit resulting from the violation exceeds the applicable penalties under this subsection, the maximum civil penalties may be increased. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes, but is not limited to, the costs avoided or enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements.

[1989, c. 727, §1 (new).]

4. Proceedings brought for benefit of municipality. All proceedings arising under locally administered laws and ordinances shall be brought in the name of the municipality. All fines resulting from those proceedings shall be paid to the municipality. [1989, c.

104, Pt. A, §45 (new); Pt. C, §10 (aff).]

5. Application. This section applies to the enforcement of land use laws and ordinances or rules which are administered and

enforced primarily at the local level, including: [2005, c. 148, §1 (amd); c. 240, §§4-6 (amd).]

A. The plumbing and subsurface waste water disposal rules adopted by the Department of Health and Human Services under Title 22, section 42, including the land area of the State which is subject to the jurisdiction of the Maine Land Use Regulation Commission;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff); 2003, c. 689, Pt. B, §6 (rev).]

B. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

C. Local ordinances adopted pursuant to Title 22, section 2642;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

D. Laws administered by local health officers pursuant to Title 22, chapters 153 and 263;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

E. Laws pertaining to fire prevention and protection, which require enforcement by local officers pursuant to Title 25, chapter 313;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

F. Laws pertaining to the construction of public buildings for the physically disabled pursuant to Title 25, chapter 331;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

G. Local land use ordinances adopted pursuant to section 3001;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

H. Local building codes adopted pursuant to sections 3001 and 3007;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

I. Local housing codes adopted pursuant to sections 3001 and 3007;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

J. Laws pertaining to junkyards, automobile graveyards and automobile recycling businesses and local ordinances regarding

junkyards, automobile graveyards and automobile recycling businesses, pursuant to chapter 183, subchapter 1 and Title 38, section

1665-A, subsection 3.

[2005, c. 148, §1 (amd).]

K. Local ordinances regarding electrical installations pursuant to chapter 185, subchapter II; [1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

L. Local ordinances regarding regulation and inspection of plumbing pursuant to chapter 185, subchapter III;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

M. Local ordinances regarding malfunctioning subsurface waste water disposal systems pursuant to section 3428;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

N. The subdivision law and local subdivision ordinances adopted pursuant to section 3001 and subdivision regulations adopted

pursuant to section 4403;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

O. Local zoning ordinances adopted pursuant to section 3001 and in accordance with section 4352;

[1989, c. 104, Pt. A, §45 (new); Pt. C, §10 (aff).]

P. Wastewater discharge licenses issued pursuant to Title 38, section 353-B;

[1999, c. 127, Pt. A, §46 (amd).]

Q. Shoreland zoning ordinances adopted pursuant to Title 38, sections 435 to 447, including those that were state-imposed;

[2005, c. 240, §4 (amd).]

R. The laws pertaining to harbors in Title 38, chapter 1, subchapter 1, local harbor ordinances adopted in accordance with Title 38,

section 7 and regulations adopted by municipal officers pursuant to Title 38, section 2; and

[2005, c. 240, §5 (amd).]

S. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and ordinance

provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as

required by the federal Clean Water Act and federal regulations and by state permits and rules.

[2005, c. 240, §6 (new).]

6. Septage and sludge permits issued by the Department of Environmental Protection. A

municipality, after notifying the

Department of Environmental Protection, may enforce the terms and conditions of a septage land disposal or storage site permit or a

sludge land application or storage site permit issued by the Department of Environmental Protection pursuant to Title 38, chapter 13,

subchapter 1. [1997, c. 38, §1 (amd).]

7. Natural resources protection laws. A code enforcement officer, authorized by a municipality to represent that municipality in

District Court and certified by the State Planning Office under section 4453 as familiar with court procedures, may enforce the provisions

of the natural resources protection laws, Title 38, chapter 3, subchapter I, article 5-A and Title 38, section 420-C, by instituting injunctive

proceedings or by seeking civil penalties in accordance with Title 38, section 349, subsection 2. [1997, c. 296, §8 (amd).]

PL 1989, Ch. 104, §A45,C10 (NEW).

PL 1989, Ch. 287, §3,4 (AMD).

PL 1989, Ch. 727, §1 (AMD).

PL 1991, Ch. 548, §D6 (AMD).
PL 1991, Ch. 732, §1-4 (AMD).
PL 1993, Ch. 23, §1,2 (AMD).
RR 1993, Ch. 1, §77 (COR).
PL 1995, Ch. 58, §1 (AMD).
PL 1995, Ch. 704, §B1 (AMD).
PL 1995, Ch. 704, §C2 (AFF).
PL 1997, Ch. 38, §1 (AMD).
PL 1997, Ch. 296, §8 (AMD).
PL 1997, Ch. 794, §A1 (AMD).
PL 1999, Ch. 127, §A46 (AMD).
PL 1999, Ch. 370, §1 (AMD).
PL 2003, Ch. 689, §B6 (REV).
PL 2005, Ch. 148, §1 (AMD).
PL 2005, Ch. 240, §4-6 (AMD).

TITLE 32 PROFESSIONS AND OCCUPATIONS

Chapter 21: Funeral Directors and Embalmers

§1501. Licenses; qualifications; requirements

The State Board of Funeral Service may determine the qualifications necessary to enable any person to lawfully engage in the funeral service profession and operate a funeral establishment. The board shall examine all applicants for licenses for the practice of funeral service and shall issue a license to all persons who successfully pass that examination. To be licensed for the practice of funeral service under this chapter, a person must be at least 18 years of age, a resident of this State, have successfully completed a prescribed course at a school or schools approved by the State Board of Funeral Service and must have served as a practitioner trainee for not less than 12 months under the personal supervision of a person licensed for the practice of funeral service and approved by the board. Each applicant shall demonstrate trustworthiness and competency to engage in the profession of funeral service in such a manner as to safeguard the interests of the public. [1989, c. 450, §22 (amd).]

Each applicant for license or registration as a practitioner of funeral service, funeral director or embalmer shall be examined on the courses as outlined in the board's rules. [1989, c. 450, §22.]

All funeral establishments and branches must be operated by a person or persons holding a funeral director's license, which was initially issued before January 1, 1989, or a practitioner of funeral service license. That license must be displayed at or in any such establishment or branch. [1989, c. 450, §22.]

A funeral establishment, in which the preparation of dead bodies takes place, must contain a preparation room equipped with tile, cement or composition floor, necessary drainage or proper disposal of waste satisfactory to the local **health officer**, ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation or other disposition. [1989, c. 450, §22 (amd).]

The board may adopt such rules and classifications as may be reasonable, sufficient and proper to define what shall be deemed the proper drainage and ventilation and what instruments are necessary and suitable in a funeral establishment. [1989, c. 450, §22 (amd).]

The board may adopt rules governing its own procedure. It may adopt rules consistent with the law governing the time, place, method and grading of examinations. Written examinations shall be retained

for a period of 5 years, but need not be retained for a longer period. The board may waive all or part of the licensing requirements and qualifications of this chapter if in its judgment these requirements and qualifications are in conflict with the religious faith of an applicant. [1989, c. 450, §22 (amd).]

TITLE 34-B MENTAL HEALTH

§3863. Emergency procedure

A person may be admitted to a mental hospital on an emergency basis according to the following procedures. [1983, c. 459, §7.]

1. Application. Any **health officer**, law enforcement officer or other person may make a written application to admit a person to a mental hospital, subject to the prohibitions and penalties of section 3805, stating:

A. His belief that the person is mentally ill and, because of his illness, poses a likelihood of serious harm; and [1983, c. 459, §7.]

B. The grounds for this belief. [1983, c. 459, §7.] [1983, c. 459, §7.]

2. Certifying examination. The written application must be accompanied by a dated certificate, signed by a licensed physician, physician's assistant, certified psychiatric clinical nurse specialist, nurse practitioner or a licensed clinical psychologist, stating:

A. The physician, physician's assistant, certified psychiatric clinical nurse specialist, nurse practitioner or psychologist has examined the person on the date of the certificate; and [1997, c. 683, Pt. B, §23 (rpr).]

B. The physician, physician's assistant, certified psychiatric clinical nurse specialist, nurse practitioner or psychologist is of the opinion that the person is mentally ill and, because of that illness, poses a likelihood of serious harm. [1997, c. 438, §2 (amd).] [1997, c. 683, Pt. B, §23 (amd).]

2-A. Custody agreement. A state, county or municipal law enforcement agency may meet with representatives of those public and private health practitioners and health care facilities that are willing and qualified to perform the certifying examination required by this section in order to attempt to work out a procedure for the custody of the person who is to be examined while that person is waiting for that examination. Any agreement must be written and signed by and filed with all participating parties. In the event of failure to work out an agreement that is satisfactory to all participating parties, the procedures of section 3862 and this section continue to apply.

As part of an agreement the law enforcement officer requesting certification may transfer protective custody of the person for whom the certification is requested to another law enforcement officer, a **health officer** if that officer agrees or the chief administrative officer of a public or private health practitioner or health facility or the chief administrative officer's designee. Any arrangement of this sort must be part of the written agreement between the law enforcement agency and the health practitioner or health care facility. In the event of a transfer, the law enforcement officer seeking the transfer shall provide the written application required by this section.

A person with mental illness may not be detained or confined in any jail or local correctional or detention facility, whether pursuant to the procedures described in section 3862, pursuant to a custody agreement, or under any other circumstances, unless that person is being lawfully detained in relation to or is serving a sentence for commission of a crime. [1997, c. 422, §9 (amd).]

3. Judicial review. The application and accompanying certificate must be reviewed by a Justice of the Superior Court, Judge of the District Court, Judge of Probate or a justice of the peace.

A. If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, the judge or justice shall endorse them and promptly send them to the admitting mental hospital. For purposes of carrying out the provisions of this section, an endorsement transmitted by facsimile machine has the same legal effect and validity as the original endorsement signed by the judge or justice. [2003, c. 206, §1 (amd).]

B. A person may not be held against the person's will in the hospital under this section, whether informally admitted under section 3831 or sought to be involuntarily admitted under this section, unless the application and certificate have been endorsed by a judge or justice, except that a person for whom an examiner has executed the certificate under subsection 2 may be detained in a hospital for a reasonable period of time, not to exceed 18 hours, pending endorsement by a judge or justice, if:

(1) For a person informally admitted under section 3831, the chief administrative officer of the hospital undertakes to secure the endorsement immediately upon execution of the certificate by the examiner; and

(2) For a person sought to be involuntarily admitted under this section, the person or persons transporting the person sought to be involuntarily admitted to the hospital undertake to secure the endorsement immediately upon execution of the certificate by the examiner. [1993, c. 596, §3 (amd).]

C. Notwithstanding paragraph B, subparagraphs (1) and (2), a person sought to be admitted informally under section 3831 or involuntarily under this section may be transported to a hospital and held for evaluation and treatment at a hospital pending judicial endorsement of the application and certificate if the endorsement is obtained between the soonest available hours of 7:00 a.m. and 11:00 p.m. [1995, c. 364, §1 (amd).] [2003, c. 206, §1 (amd).]

4. Custody and transportation. Custody and transportation under this section are governed as follows.

A. Upon endorsement of the application and certificate by the judge or justice, a law enforcement officer or other person designated by the judge or justice may take the person into custody and transport that person to the hospital designated in the application. Transportation of an individual to a hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual. [RR 2001, c. 2, Pt. A, §43 (cor).]

B. The Department of Health and Human Services is responsible for any transportation expenses under this section, including return from the hospital if admission is declined. The department shall utilize any 3rd-party payment sources that are available. [1995, c. 560, Pt. K, §37 (amd); §83 (aff); 2001, c. 354, §3 (amd); 2003, c. 689, Pt. B, §6 (rev).]

C. When a person who is under a sentence or lawful detention related to commission of a crime and who is incarcerated in a jail or local correctional or detention facility is admitted to a hospital under any of the procedures in this subchapter, the county where the incarceration originated shall pay all expenses incident to transportation of the person between the hospital and the jail or local correctional or detention facility. [1997, c. 422, §11.] [RR 2001, c. 2, Pt. A, §43 (cor); 2003, c. 689, Pt. B, §6 (rev).]

5. Continuation of hospitalization. If the chief administrative officer of the hospital recommends further hospitalization of the person, the chief administrative officer shall determine the suitability of admission, care and treatment of the patient as an informally admitted patient, as described in section 3831.

A. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is suitable, the chief administrative officer shall admit the person on this basis, if the person so desires. [1995, c. 496, §2 (amd).]

B. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is not suitable, or if the person declines admission as an informally admitted patient, the chief administrative officer of the hospital may seek involuntary commitment of the patient by filing an application for the issuance of an order for hospitalization under section 3864, except that if the hospital is a designated nonstate mental health institution and if the patient was admitted under the

contract between the hospital and the department for receipt by the hospital of involuntary patients, then the chief administrative officer may seek involuntary commitment only by requesting the commissioner to file an application for the issuance of an order for hospitalization under section 3864.

(1) The application must be made to the District Court having territorial jurisdiction over the hospital to which the person was admitted on an emergency basis.

(2) The application must be filed within 5 days from the admission of the patient under this section, excluding the day of admission and any Saturday, Sunday or legal holiday. [1995, c. 496, §2 (amd).]

C. If neither readmission nor application to the District Court is effected under this subsection, the chief administrative officer of the hospital to which the person was admitted on an emergency basis shall discharge the person immediately. [1995, c. 496, §2 (amd).] [1995, c. 496, §2 (amd).]

6. Notice. Upon admission of a person under this section, and after consultation with the person, the chief administrative officer of the hospital shall notify, as soon as possible regarding the fact of admission, the person's:

A. Guardian, if known; [1997, c. 422, §12 (amd).]

B. Spouse; [1997, c. 422, §12 (amd).]

C. Parent; [1997, c. 422, §12 (amd).]

D. Adult child; or [1997, c. 422, §12 (amd).]

E. One of next of kin or a friend, if none of the listed persons exists. [1983, c. 459, §7.]

If the chief administrative officer has reason to believe that notice to any individual in paragraphs A to E would pose risk of harm to the person admitted, then notice may not be given to that individual. [1997, c. 422, §12 (amd).]

7. Post-admission examination. Every patient admitted to a hospital shall be examined as soon as practicable after his admission.

A. The chief administrative officer of the hospital shall arrange for examination by a staff physician or licensed clinical psychologist of every patient hospitalized under this section. [1983, c. 459, §7.]

B. The examiner may not be the certifying examiner under this section or under section 3864. [1983, c. 459, §7.]

C. If the post-admission examination is not held within 24 hours after the time of admission, or if a staff physician or licensed clinical psychologist fails or refuses after the examination to certify that, in his opinion, the person is mentally ill and due to his mental illness poses a likelihood of serious harm, the person shall be immediately discharged. [1983, c. 459, §7.] [1983, c. 459, §7.]

PL 1983, Ch. 459, §7 (NEW). PL 1985, Ch. 815, § (AMD). PL 1987, Ch. 736, §53 (AMD). PL 1989, Ch. 568, §1,3 (AMD). PL 1993, Ch. 592, §1 (AMD). PL 1993, Ch. 596, §3 (AMD). PL 1995, Ch. 62, §3 (AMD). PL 1995, Ch. 143, §1 (AMD). PL 1995, Ch. 364, §1 (AMD). PL 1995, Ch. 496, §2 (AMD). PL 1995, Ch. 560, §K37 (AMD). PL 1995, Ch. 560, §K83 (AFF). PL 1997, Ch. 422, §8-12 (AMD). PL 1997, Ch. 438, §2 (AMD). PL 1997, Ch. 683, §B23 (AMD). PL 2001, Ch. 354, §3 (AMD). RR 2001, Ch. 2, §A43 (COR). PL 2003, Ch. 206, §1 (AMD). PL 2003, Ch. 689, §B6 (REV).

§5476. Judicial commitment

Any client recommended for admission to a mental retardation facility may be admitted by judicial commitment according to the following procedures. [2003, c. 389, §19 (amd).]

1. Application to the District Court. If the chief administrative officer of the facility determines that the admission of the client pursuant to section 5473, subsection 2, is not suitable, or if the client declines admission pursuant to section 5473, subsection 2, the chief administrative officer may apply to the District Court having territorial jurisdiction over the facility for the issuance of an order of judicial

commitment. [1983, c. 580, §23 (rpr).]

2. Time of application. The chief administrative officer shall file the application within 5 days from the day of admission of the client under this section, excluding Saturdays, Sundays and legal holidays. [1983, c. 580, §23 (rpr).]

3. Accompanying documents. The application shall be accompanied by:

A. A written application, made subject to the prohibitions and penalties of section 3805 and made by any **health officer**, law enforcement officer or other person, stating:

(1) His belief that the client is mentally retarded and poses a likelihood of serious harm; and

(2) The grounds for this belief; [1983, c. 580, §23.]

B. A dated certificate, signed by a private licensed physician or a private licensed clinical psychologist, stating that:

(1) He has examined the client on the date of the certificate, which date may not be more than 3 days before the date of admission to the facility; and

(2) He is of the opinion that the client is mentally retarded and poses a likelihood of serious harm; and [1983, c. 580, §23.]

C. A certificate of the facility's examining physician or psychologist, stating that he has examined the client and it is his opinion that the client is mentally retarded and poses a likelihood of serious harm:

(1) The examiner may not be the certifying examiner under paragraph B; and

(2) If the examination is not held within 24 hours after the time of admission or if the facility's examining physician or psychologist fails or refuses to make the required certification, the client shall be immediately discharged. [1983, c. 580, §23.] [1983, c. 580, §23.]

4. Notice of receipt of application. The giving of notice of receipt of application under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in this section, the court shall cause written notice of the application:

(1) To be given personally or by mail to the client within a reasonable time before the hearing, but not less than 3 days before the hearing; and

(2) To be mailed to the client's guardian, if known, and to his spouse, his parent or one of his adult children, or if none of these persons exist or if none of them can be located, to one of his next of kin or an advocate. [1983, c. 580, §23.]

B. A docket entry is sufficient evidence that notice under this subsection has been given. [1983, c. 580, §23.] [1983, c. 580, §23.]

5. Examination. Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in this section, the court shall forthwith cause the client to be examined by 2 examiners.

(1) Each examiner shall be either a licensed physician or a licensed clinical psychologist.

(2) One of the examiners shall be a physician or psychologist chosen by the client or by his counsel, if the chosen physician or psychologist is reasonably available.

(3) Neither examiner appointed by the court may be the certifying examiner under subsection 3, paragraph B or C. [1983, c. 580, §23.]

B. The examination shall be held at the facility or at any other suitable place not likely to have a harmful effect on the well-being of the client. [1983, c. 580, §23.]

C. If the unanimous reports of the examiners are to the effect that the client is not mentally retarded or does not pose a likelihood of serious harm, the application shall be dismissed and the client shall be ordered discharged forthwith. [1983, c. 580, §23.]

D. If the report of either or both of the examiners is to the effect that the client is mentally retarded and poses a likelihood of serious harm, the hearing shall be held on the date, or on the continued date, which the court has set for the hearing. [1983, c. 580, §23.] [1983, c. 580, §23.]

6. Hearing. Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 15 days from the date of the application.

(1) On a motion by any party, the hearing may be continued for cause for a period not to exceed 10 additional days.

(2) If the hearing is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the client discharged forthwith.

(3) In computing the time periods set forth in this paragraph, the District Court Rules of Civil Procedure shall apply. [1983, c. 580, §23.]

B. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the well-being of the person. [1983, c. 580, §23.]

C. The court shall receive all relevant and material evidence which may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The client, the applicant and all other persons to whom notice is required to be sent shall be afforded an opportunity to appear at the hearing to testify.

(2) The client and the applicant shall be afforded the opportunity to cross-examine witnesses.

(3) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [1983, c. 580, §23.]

D. The client shall be afforded an opportunity to be represented by counsel and, if neither the client nor others provide counsel, the court shall appoint counsel for the client. [1983, c. 580, §23.]

E. In addition to proving that the client is mentally retarded, the applicant shall show:

(1) By evidence of the client's actions and behavior, that the client poses a likelihood of serious harm; and

(2) That after full consideration of less restrictive treatment settings and modalities, judicial commitment to a mental retardation facility is the best available means for the treatment or security of the client. [1983, c. 580, §23.]

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony indicating the individual treatment plan to be followed by the facility's staff, if the client is committed under this section, and shall bear any expense for this purpose. [1983, c. 580, § 23.]

G. A stenographic or electronic record shall be made of the proceedings in all judicial commitment hearings.

(1) The record, all notes, exhibits and other evidence shall be confidential.

(2) The record, all notes, exhibits and other evidence shall be retained as part of the District Court records for a period of 2 years from the date of the hearing. [1983, c. 580, §23.]

H. The hearing shall be confidential. No report of the proceedings may be released to the public or press, except by permission of the client, or his counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the client or his counsel. [1983, c. 580, §23.] [1983, c. 580, §23.]

7. Court findings. Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the client is mentally retarded and that his recent actions and behavior demonstrate that he poses a likelihood of serious harm;

(2) That judicial commitment to the facility is the best available means for treatment or security of the client; and

(3) That it is satisfied with the individual treatment plan offered by the facility. [1983, c. 763 (amd).]

B. If the District Court makes the findings described in paragraph A, subparagraphs 1 and 2, but is not satisfied with the individual treatment plan offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the facility. [1983, c. 580, §23.] [1983, c. 763 (amd).]

8. Commitment. Upon making the findings described in subsection 7, the court may order commitment of the client to the facility for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing or it may take the matter under advisement and issue an order within 24 hours of the hearing. [1983, c. 580, §23.]

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and shall order the person discharged forthwith. [1983, c. 580, §23.] [1983, c. 580, §23.]

9. Continued judicial commitment. If the chief administrative officer of the facility determines that continued judicial commitment is necessary for a person who has been ordered by the District Court to be committed, he shall, not later than 30 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court which has territorial jurisdiction over the facility for a hearing to be held under this section. [1983, c. 580, §23.]

10. Transportation. Unless otherwise directed by the court, the sheriff of the county in which the District Court has jurisdiction and in which the hearing takes place shall provide transportation to any facility to which the court has committed the person. [1983, c. 580, §23.]

11. Expenses. With the exception of expenses incurred by the applicant pursuant to subsection 6, paragraph F, the District Court shall be responsible for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person. [1983, c. 580, §23.]

12. Appeals. A person ordered by the District Court to be committed to the facility may appeal from that order to the Superior Court.

A. The appeal shall be on questions of law only. [1983, c. 580, §23.]

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous. [1983, c. 580, §23.]

C. The order of the District Court shall remain in effect pending the appeal. [1983, c. 580, §23.]

D. The District Court Rules of Civil Procedure and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [1983, c. 580, §23.] [1983, c. 580, §23.]

13. Rules. If necessary, the commissioner shall promulgate rules for the effective implementation of this section. [1983, c. 580, §23.] PL 1983, Ch. 459, §7 (NEW). PL 1983, Ch. 580, §23 (RPR). PL 1983, Ch. 763, § (AMD). PL 2003, Ch. 389, §19 (AMD).

§5477. Emergency procedures

1. Protective custody. If a law enforcement officer has reasonable grounds to believe, based upon his

personal observation, that a person may be mentally retarded, that he presents a threat of imminent and substantial physical harm to himself or to other persons and that an emergency exists requiring immediate residential placement:

A. The officer may take the person into protective custody; and [1983, c. 459, § 7.]

B. If the officer does take the person into protective custody, the officer shall deliver the person forthwith, within 18 hours, for examination by an available licensed physician or licensed psychologist as provided in subsection 4. [1983, c. 459, § 7.] [1983, c. 580, § 24 (amd).]

2. Certificate not executed. If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under subsection 4, the officer shall:

A. Release the person from protective custody and, with his permission, return him forthwith to his place of residence, if within the territorial jurisdiction of the officer; [1983, c. 459, § 7.]

B. Release the person from protective custody and, with his permission, return him to the place where he was taken into protective custody; or [1983, c. 459, § 7.]

C. If the person is also under arrest for violation of law, retain him in custody until he is released in accordance with the law. [1983, c. 459, § 7.] [1983, c. 459, § 7.]

3. Certificate executed. If the certificate is executed by the examiner under subsection 4, the officer shall undertake forthwith, within 18 hours, to obtain the endorsement by a judicial officer under subsection 4 and may detain the person for as long as necessary to obtain the endorsement. [1983, c. 459, § 7.]

4. Admission. A person may be admitted to a facility after the facility has received an application and certificate according to the following procedures.

A. Any **health officer**, law enforcement officer or other person may make a written application to admit a person to a facility, subject to the prohibitions and penalties of section 3805, stating:

(1) His belief that the person is in need of institutional services;

(2) That an emergency exists requiring immediate placement in a facility; and

(3) The grounds for this belief. [1983, c. 459, § 7.]

B. The written application shall be accompanied by a dated certificate, signed by a licensed physician or a licensed clinical psychologist, stating:

(1) He has examined the person on the date of the certificate, which date may not be more than 3 days before the date of admission to the facility; and

(2) He is of the opinion that the person is a mentally retarded person in need of institutional services.

[1983, c. 459, § 7.]

C. The application and accompanying certificate shall be reviewed by a Justice of the Superior Court, a Judge of the District Court, a Judge of Probate or a justice of the peace.

(1) If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, he shall endorse them.

(2) No person may be held against his will in the facility under this subsection unless the application and certificate have been endorsed by a judge or justice, except that a person for whom an examiner has executed the certificate provided for under this subsection may be detained in a facility for as long as is necessary to obtain the endorsement by a judge or justice, if the person or persons transporting the person to the facility undertake to secure the endorsement forthwith upon execution of the certificate by the examiner. [1987, c. 736, §55 (amd).]

D. Upon endorsement by the judge or justice of the application and certificate, any health officer, police officer or other person designated by the judge or justice may take the person into custody and transport him to the facility designated in the application. [1983, c. 459, § 7.]

E. The county in which the person is found is responsible for any expenses of transportation for the person under this subsection, including return from the facility if admission is declined. [1983, c. 459, §

7.]

F. Under this subsection, a facility may admit the client for no longer than 5 days, but if a petition for judicial certification or judicial commitment is filed, the facility may admit the client for an additional period not to exceed 25 days from the date of application. [1983, c. 580, § 25 (amd).] [1987, c. 736, §55 (amd).] PL 1983, Ch. 459, §7 (NEW). PL 1983, Ch. 580, §24,25 (AMD). PL 1987, Ch. 736, §55 (AMD).

TITLE 38 ENVIRONMENTAL PROTECTION

§2171. Citizen advisory committee

The municipal officers of each municipality identified by the Facility Siting Board as a potential site for a waste disposal facility and each contiguous municipality that may be affected by the construction or operation of that facility shall jointly establish a single citizen advisory committee within 60 days of notification pursuant to section 2155. [1993, c. 310, Pt. B, §3 (amd).]

1. Membership. The committee must be comprised of citizens from each affected municipality, appointed by the municipal officers, including, but not limited to: a municipal **health officer** ; a municipal officer; and at least 3 additional residents of the municipality, including abutting property owners and residents potentially affected by pollution from the facility. In addition, each committee may include members representing any of the following interests: environmental and community groups; labor groups; professionals with expertise relating to landfills or incinerators; experts in the areas of chemistry, epidemiology, hydrogeology and biology; and legal experts. [1993, c. 310, Pt. B, §4 (amd).]

2. Meetings. The committee shall meet as soon as practical following appointment of its members and shall select a chair from among its members. The committee shall establish procedures for the conduct of meetings. [1989, c. 585, Pt. A, §7.]

3. Responsibilities. Each committee established under this section may:

A. Review proposed contracts, site analyses, applications and other documents relating to the location, construction, permitting and operation of the facility; [1993, c. 310, Pt. B, §5 (amd).]

B. Hold periodic public meetings to solicit the opinions of residents concerning the facility and any permit applications, contracts or other provisions relating to the facility and the regional plan; [1993, c. 310, Pt. B, §5 (amd).]

C. Provide the project developer and department with any alternative contract provisions, permit conditions, plans or procedures it considers appropriate; and [1993, c. 310, Pt. B, §5 (amd).]

D. Serve as a liaison between the community and the project developer or the commissioner to facilitate communications during the development and operation of the facility, and provide residents with updated information about the project, including providing explanations of any technical terms. [1993, c. 310, Pt. B, §5 (amd).] [1993, c. 310, Pt. B, §5 (amd).]

4. Unincorporated townships and plantations. For the purposes of this subchapter, county commissioners shall act as municipal officers for unincorporated townships and assessors of plantations shall act as municipal officers for plantations. [1989, c. 585, Pt. A, §7.]