

**Maine Revised Statutes**  
**Title 37-B: DEFENSE, VETERANS**  
**AND EMERGENCY MANAGEMENT**

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# Title 37-B: DEFENSE, VETERANS AND EMERGENCY MANAGEMENT

## Chapter 1: GENERAL PROVISIONS - ORGANIZATION

### §1. PURPOSE

The Department of Defense, Veterans and Emergency Management, as previously established and referred to in this Title as the "department," shall coordinate and improve the discharge of the State Government's responsibility for military affairs, veterans' services and emergency management matters. [2001, c. 614, §2 (AMD); 2001, c. 662, §13 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1997, c. 455, §31 (AMD). 2001, c. 614, §2 (AMD). 2001, c. 662, §13 (AMD).

### §2. COMPOSITION

The department consists of the following: [1997, c. 455, §10 (AMD).]

**1. Military Bureau.** The Military Bureau;

[ 1983, c. 460, §3 (NEW) .]

**2. Maine Emergency Management Agency.** The Maine Emergency Management Agency; and

[ 1987, c. 370, §11 (AMD) .]

**3. Bureau of Maine Veterans' Services.** The Bureau of Maine Veterans' Services.

[ 1997, c. 455, §11 (AMD) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §§10,11 (AMD). 1991, c. 626, §5 (AMD). 1997, c. 455, §§10,11 (AMD).

### §3. COMMISSIONER; DEPUTY ADJUTANT GENERAL

**1. Adjutant General.** The Adjutant General shall be the Commissioner of Defense, Veterans and Emergency Management and shall:

A. Be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over veterans' affairs and confirmation by the Legislature and serve at the pleasure of the Governor; [1995, c. 302, §1 (AMD).]

B. Not hold a grade above major general; [1983, c. 460, §3 (NEW).]

C. Satisfy the requirements of section 107; and [1983, c. 460, §3 (NEW).]

D. Have the following powers and duties.

(1) The Adjutant General shall administer the department subordinate only to the Governor.

(2) The Adjutant General shall establish methods of administration consistent with the law necessary for the efficient operation of the department.

(3) The Adjutant General may prepare a budget for the department.

- (4) The Adjutant General may transfer personnel from one bureau to another within the department.
- (5) The Adjutant General shall supervise the preparation of all state informational reports required by the federal military establishment.
- (6) The Adjutant General shall keep an accurate account of expenses incurred and, in accordance with Title 5, sections 43 to 46, make a full report to the Governor as to the condition of the military forces, and as to all business transactions of the Military Bureau, including detailed statements of expenditures for military purposes.
- (7) The Adjutant General is responsible for the custody, care and repair of all military property belonging to or issued to the State for the military forces and shall dispose of military property belonging to the State that is unserviceable. The Adjutant General shall account for and deposit the proceeds from that disposal with the Treasurer of State, who shall credit them to the Capital Repair, Maintenance, Construction and Acquisition Account of the Military Bureau.
- (8) The Adjutant General may sell for cash to officers of the state military forces, for their official use, and to organizations of the state military forces, any military or naval property that is the property of the State. The Adjutant General shall, with an annual report, render to the Governor an accurate account of the sales and deposit the proceeds of the sales with the Treasurer of State, who shall credit them to the General Fund.
- (9) The Adjutant General shall represent the state military forces for the purpose of establishing the relationship between the federal military establishment and the various state military staff departments.
- (10) The Adjutant General shall accept, receive and administer federal funds for and on behalf of the State that are available for military purposes or that would further the intent and specific purposes of this chapter and chapter 3. The Adjutant General shall provide the personnel, supplies, services and matching funds required by a federal cost-sharing arrangement pursuant to 31 United States Code, Chapters 63 and 65 (2013); 32 United States Code (2013); and National Guard Regulation 5-1 (2010). The Adjutant General shall receive funds and property and an accounting for all expenditures and property acquired through such a federal cost-sharing arrangement and make returns and reports concerning those expenditures and that property as required by such a federal cost-sharing arrangement.
- (11) The Adjutant General shall acquire, construct, operate and maintain military facilities necessary to comply with this Title and Title 32 of the United States Code and shall operate and maintain facilities now within or hereafter coming within the jurisdiction of the Military Bureau.
- (12) The Adjutant General may adopt rules pertaining to compliance with state and federal contracting requirements, subject to Title 5, chapter 375. Those rules must provide for approval of contracts by the appropriate state agency.
- (13) The Adjutant General shall allocate and supervise any funds made available by the Legislature to the Civil Air Patrol.
- (14) The Adjutant General shall report at the beginning of each biennium to the joint standing committee of the Legislature having jurisdiction over veterans' affairs on any recommended changes or modifications to the laws governing veterans' affairs, particularly as those changes or modifications relate to changes in federal veterans' laws. The report must include information on the status of communications with the United States Department of Veterans Affairs regarding the potential health risks to and the potential disabilities of veterans who as members of the Maine National Guard were exposed to environmental hazards at the Canadian military support base in Gagetown, New Brunswick, Canada.
- (15) The Adjutant General may receive personal property from the United States Department of Defense that the Secretary of Defense has determined is suitable for use by agencies in law enforcement activities, including counter-drug activities, and in excess of the needs of the Department of Defense pursuant to 10 United States Code, Section 2576a, and transfer ownership

of that personal property to state, county and municipal law enforcement agencies notwithstanding any other provision of law. The Adjutant General may receive excess personal property from the United States Department of Defense for use by the department, notwithstanding any other provision of law.

(16) The Adjutant General may establish a science, mathematics and technology education improvement program for schoolchildren known as the STARBASE Program. The Adjutant General may accept financial assistance and in-kind assistance, advances, grants, gifts, contributions and other forms of financial assistance from the Federal Government or other public body or from other sources, public or private, to implement the STARBASE Program. The Adjutant General may employ a director and other employees, permanent or temporary, to operate the STARBASE Program.

(17) The Adjutant General shall establish a system, to be administered by the Director of the Bureau of Maine Veterans' Services, to express formally condolence and appreciation to the closest surviving family members of members of the United States Armed Forces who, since September 11, 2001, are killed in action or die as a consequence of injuries that result in the award of a Purple Heart medal. In accordance with the existing criteria of the department for the awarding of gold star medals, this system must provide for the Adjutant General to issue up to 3 gold star medals to family members who reside in the State, one to the spouse of the deceased service member and one to the parents of the service member. If the parents of the service member are divorced, the Adjutant General may issue one medal to each parent. If the service member has no surviving spouse or parents or if they live outside of the State, the Adjutant General may issue a gold star medal to the service member's next of kin, as reported to the department, who resides in the State.

(18) The Adjutant General may establish a National Guard Youth Challenge Program consistent with 32 United States Code, Section 509 (1990). The Adjutant General may accept financial assistance from the Federal Government or other public body or from other sources, public and private, to implement the National Guard Youth Challenge Program. The Adjutant General may employ a director and other employees, permanent or temporary, to operate the program.

(19) The Adjutant General may execute cooperative agreements for purposes described or defined by this Title and other arrangements necessary to operate the department.

(20) The Adjutant General shall act as the Governor's homeland security advisor.

(21) The Adjutant General shall implement a program to identify residents of the State who are not considered veterans but are military retirees or former members of the Maine Army National Guard or Maine Air National Guard who successfully completed service.

(22) The Adjutant General may negotiate and execute agreements to provide state military forces to or accept military forces from other states in support of federally funded National Guard missions.

(23) The Adjutant General may provide logistical and administrative support to military welfare societies as defined in 10 United States Code, Section 1033(b)(2) in the performance of their functions and to state military welfare societies as defined in section 101-A, subsection 3 in the performance of their functions to provide relief directly to members of the Maine National Guard and the Maine Air National Guard and to facilitate the distribution of emergency financial relief in accordance with section 158. [2017, c. 475, Pt. A, §63 (RPR).]

[ 2007, c. 461, §1 (AMD); 2011, c. 112, §1 (AMD); 2013, c. 251, §1 (AMD); 2013, c. 469, §1 (AMD); 2013, c. 569, §2 (AMD); 2015, c. 465, Pt. A, §1 (AMD); 2017, c. 108, §1 (AMD); 2017, c. 114, §1 (AMD); 2017, c. 475, Pt. A, §63 (AMD) .]

**2. Deputy Adjutant General.** The Deputy Adjutant General has all the military-related powers, responsibilities and duties of the Adjutant General if the Adjutant General is unable to act or, if the office is vacant, until the vacancy is filled by the Governor, as provided by law. The Deputy Adjutant General may perform other military duties of the Adjutant General as assigned by the Adjutant General or the Governor.

[ 1995, c. 196, Pt. C, §1 (AMD) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §2 (AMD). 1991, c. 376, §62 (AMD). 1995, c. 196, §C1 (AMD). 1995, c. 302, §1 (AMD). 1995, c. 684, §1 (AMD). 1997, c. 455, §32 (AMD). 1999, c. 401, §K2 (AMD). 1999, c. 565, §1 (AMD). 2001, c. 662, §14 (AMD). 2003, c. 404, §2 (AMD). 2003, c. 590, §1 (AMD). 2007, c. 461, §1 (AMD). 2011, c. 112, §1 (AMD). 2013, c. 251, §1 (AMD). 2013, c. 469, §1 (AMD). 2013, c. 569, §2 (AMD). 2015, c. 465, Pt. A, §1 (AMD). 2017, c. 108, §1 (AMD). 2017, c. 114, §1 (AMD). 2017, c. 475, Pt. A, §63 (AMD).

## §4. DIRECTORS OF BUREAUS

**1. Bureau of Maine Veterans' Services.** The Director of the Bureau of Maine Veterans' Services is appointed by the commissioner and serves at the pleasure of the commissioner.

[ 2013, c. 251, §2 (NEW) .]

**2. Maine Emergency Management Agency.** The Director of the Maine Emergency Management Agency is appointed by the Governor upon the recommendation of the commissioner, reports administratively to the commissioner and serves at the pleasure of the Governor.

[ 2013, c. 251, §2 (NEW) .]

The Director of the Bureau of Maine Veterans' Services and the Director of the Maine Emergency Management Agency shall perform civilian duties as assigned by the commissioner or Governor. [2013, c. 251, §2 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 634, §3 (RPR). 1989, c. 502, §A138 (AMD). 1989, c. 878, §F6 (AMD). 1991, c. 376, §63 (AMD). 1991, c. 626, §6 (AMD). 1993, c. 694, §1 (AMD). 1997, c. 455, §12 (AMD). 1997, c. 643, §Q5 (AMD). 2013, c. 251, §2 (RPR).

## §5. DEPUTY COMMISSIONER

The commissioner may appoint a deputy commissioner and assign duties and delegate authority to the deputy commissioner as considered appropriate by the commissioner or Governor. The deputy commissioner serves at the pleasure of the commissioner. [1997, c. 643, Pt. Q, §6 (NEW).]

#### SECTION HISTORY

1997, c. 643, §Q6 (NEW).

## §6. ISSUANCE OF FREE DAY USE PASS AND LICENSES

*(REPEALED)*

#### SECTION HISTORY

2005, c. 268, §3 (NEW). 2009, c. 220, §3 (AMD). 2009, c. 220, §5 (AFF).  
2009, c. 440, §3 (RP).

## §7. ISSUANCE OF FREE DAY USE PASS TO ACTIVE MILITARY PERSONNEL

The Commissioner of Defense, Veterans and Emergency Management, in accordance with a memorandum of agreement entered into with the Commissioner of Agriculture, Conservation and Forestry and this section, shall issue a free day use pass to state parks and historic sites to eligible active duty military personnel. [2009, c. 220, §4 (NEW); 2011, c. 657, Pt. W, §6 (REV).]

**1. Eligibility.** The Department of Defense, Veterans and Emergency Management shall determine, based on an examination of an individual's military identification, whether the following criteria are met:

- A. The person's home of residence is this State; and [2009, c. 220, §4 (NEW).]
- B. The person is serving in an enlisted grade in the armed forces as defined in 10 United States Code, Section 101(a)(4). [2009, c. 220, §4 (NEW).]

[ 2009, c. 220, §4 (NEW) .]

**2. Duration of passes.** A pass issued in accordance with this section is valid for 12 months from the date of issuance and may be renewed upon verification of continuing eligibility.

[ 2009, c. 220, §4 (NEW) .]

**3. Responsibilities of commissioner.** The Commissioner of Defense, Veterans and Emergency Management shall identify a point of contact within the department to issue passes in accordance with this section and the memorandum of agreement entered into with the Commissioner of Agriculture, Conservation and Forestry. The Commissioner of Defense, Veterans and Emergency Management shall periodically report to the Department of Agriculture, Conservation and Forestry with a listing of the names and addresses of all persons receiving passes to state parks and historic sites and the expiration dates for those passes.

[ 2009, c. 440, §4 (AMD); 2011, c. 657, Pt. W, §§5, 6 (REV) .]

### SECTION HISTORY

2009, c. 220, §4 (NEW). 2009, c. 440, §4 (AMD). 2011, c. 657, Pt. W, §§5, 6 (REV).

## §8. ISSUANCE OF FREE DAY USE PASS TO VETERANS

The Commissioner of Defense, Veterans and Emergency Management, in accordance with a memorandum of agreement entered into with the Commissioner of Agriculture, Conservation and Forestry and this section, shall issue a free day use pass to state parks and historic sites to eligible veterans. [2009, c. 440, §5 (NEW); 2011, c. 657, Pt. W, §6 (REV).]

**1. Eligibility.** The Department of Defense, Veterans and Emergency Management shall determine, based on an examination of an individual's discharge certificate from active duty services, also known as the DD214, whether the following criteria are met:

- A. The person is a resident of this State; and [2009, c. 440, §5 (NEW).]
- B. The person received an honorable discharge or general discharge under honorable conditions. [2009, c. 440, §5 (NEW).]

[ 2009, c. 440, §5 (NEW) .]

**2. Responsibilities of commissioner.** The Commissioner of Defense, Veterans and Emergency Management shall identify a point of contact within the department to issue passes in accordance with this section, Title 12, section 1819-A and the memorandum of agreement entered into with the Commissioner of Agriculture, Conservation and Forestry. The Commissioner of Defense, Veterans and Emergency Management shall periodically report to the Department of Agriculture, Conservation and Forestry with a listing of the names and addresses of all persons receiving passes to state parks and historic sites and the beginning dates for those passes. A pass issued under this section does not expire and is valid for the lifetime of the holder.

[ 2009, c. 440, §5 (NEW); 2011, c. 657, Pt. W, §§5, 6 (REV) .]

#### SECTION HISTORY

2009, c. 440, §5 (NEW). 2011, c. 657, Pt. W, §§5, 6 (REV).

## §8-A. ISSUANCE OF FREE ADMISSION PASS TO MAINE STATE MUSEUM TO VETERANS

The Commissioner of Defense, Veterans and Emergency Management, in accordance with a memorandum of agreement entered into with the Maine State Museum Commission under Title 27, section 83, subsection 5 and this section, shall issue a free admission pass to the Maine State Museum to eligible veterans pursuant to subsection 1. [2017, c. 370, §2 (NEW) .]

**1. Eligibility.** The department shall determine a person's eligibility for a pass under this section by establishing that the person is a veteran and:

A. The person is a resident of this State; and [2017, c. 370, §2 (NEW) .]

B. The person received an honorable discharge or general discharge under honorable conditions. [2017, c. 370, §2 (NEW) .]

[ 2017, c. 370, §2 (NEW) .]

**2. Responsibilities of commissioner.** The Commissioner of Defense, Veterans and Emergency Management shall identify a point of contact within the department to issue free admission passes in accordance with this section and the memorandum of agreement entered into with the Maine State Museum Commission pursuant to Title 27, section 83, subsection 5. The Commissioner of Defense, Veterans and Emergency Management shall periodically report to the Maine State Museum Commission a list of the names and addresses of all persons receiving passes to the Maine State Museum and the beginning dates for those passes. A pass issued under this section does not expire and is valid for the lifetime of the holder.

[ 2017, c. 370, §2 (NEW) .]

#### SECTION HISTORY

2017, c. 370, §2 (NEW) .

## §9. ISSUANCE OF FREE FISHING LICENSE AND FREE HUNTING LICENSE TO VETERANS

*(REPEALED)*



The Commissioner of Defense, Veterans and Emergency Management, in accordance with a memorandum of agreement entered into with the Commissioner of Inland Fisheries and Wildlife and this section, shall issue a free fishing license and free hunting license to eligible veterans who meet other criteria of the Department of Inland Fisheries and Wildlife for the issuance of licenses. [ 2009, c. 440, §6 (NEW) . ]

SECTION HISTORY

2009, c. 440, §6 (NEW). MRSA T. 37-B, §9, sub-§4 (RP).

## §10. REPORT BY ADJUTANT GENERAL

The President of the Senate and the Speaker of the House of Representatives may invite the Adjutant General to appear in February of each year before a joint session of the Legislature to address the Legislature on defense, veterans' services and emergency management matters and such other matters as the Adjutant General desires to bring to the attention of the Legislature. [ 2011, c. 472, §1 (NEW) . ]

SECTION HISTORY

2011, c. 472, §1 (NEW).

## §11. INFORMATION OF DEPENDENTS

**1. Confidentiality; exceptions.** Any personally identifying information obtained by the State under this Title concerning a dependent of a member of the United States Armed Forces or state military forces who is deployed out of state is confidential and may not be disclosed except:

- A. By written consent of the subject of the information or, if the subject of the information is less than 18 years of age, a parent or guardian of the subject; [ 2015, c. 295, §2 (NEW) . ]
- B. By court order; [ 2015, c. 295, §2 (NEW) . ]
- C. For criminal justice purposes; or [ 2015, c. 295, §2 (NEW) . ]
- D. For official purposes of the department or the United States Department of Veterans Affairs. [ 2015, c. 295, §2 (NEW) . ]

[ 2015, c. 295, §2 (NEW) . ]

**2. Dependent.** For the purposes of this section, "dependent" has the same meaning as in 10 United States Code, Section 1072.

[ 2015, c. 295, §2 (NEW) . ]

SECTION HISTORY

2015, c. 295, §2 (NEW).

## Chapter 3: MILITARY BUREAU

### Subchapter 1: ORGANIZATION OF STATE MILITARY FORCES

#### §101. PURPOSE

The Military Bureau has jurisdiction over and responsibility for the administration of the state military forces and the Maine Military Authority. [2003, c. 342, §1 (AMD).]

##### SECTION HISTORY

1983, c. 460, §3 (NEW). 2003, c. 342, §1 (AMD).

#### §101-A. DEFINITIONS

**1. Active state service.** As used in this Title, "active state service" means all military duty performed as a member of the state military forces pursuant to this Title or the United States Code, Title 32.

[ 1995, c. 196, Pt. B, §1 (AMD) .]

**2. Military forces.** "Military forces" means the state military forces, as defined in section 102.

[ 1987, c. 230, §1 (NEW) .]

**3. State military welfare society.** "State military welfare society" means a nonprofit agency composed primarily of serving or former Maine Army National Guard or Maine Air National Guard members established to solicit and accept donations for the purpose of providing emergency financial relief to members of the state military forces. A state military welfare society may be the same organization as a military welfare society as defined in 10 United States Code, Section 1033(b)(2).

[ 2017, c. 114, §2 (NEW) .]

##### SECTION HISTORY

1987, c. 230, §1 (NEW). 1995, c. 196, §B1 (AMD). 2017, c. 114, §2 (AMD).

#### §102. COMPOSITION

**1. State military forces.** The state military forces shall consist of:

A. The Maine Army National Guard and the Maine Air National Guard, referred to in this Title as the "National Guard," when either or both are not in federal service and state military forces provided under section 3, subsection 1, paragraph D, subparagraph (22), but not the Maine Military Authority; and [2017, c. 108, §2 (AMD).]

B. The militia, the naval militia and the Maine State Guard when and if organized by direction of the Governor pursuant to the authority set forth in subchapter IV. [2001, c. 662, §15 (AMD).]

[ 2017, c. 108, §2 (AMD) .]

##### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §15 (AMD). 2003, c. 342, §2 (AMD). 2017, c. 108, §2 (AMD).

## §103. COMMANDER IN CHIEF

The Governor shall be the constitutional Commander in Chief of the military forces of the State, except for components thereof which may, at times, be in the service of the United States. It shall be the duty of the Governor as Commander in Chief to prescribe orders, rules and other administrative procedures necessary to maintain the standard of organization and armament for the state military forces required by the laws and regulations of the United States. Subject to regulations prescribed by the federal military establishment, the Governor shall establish administrative procedures necessary to insure that adequate numbers of officers, warrant officers and enlisted men are appointed, commissioned and enlisted into the state military forces. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §104. GOVERNOR'S MILITARY STAFF

The military staff of the Governor as Commander in Chief consists of: [2001, c. 662, §16 (AMD).]

### 1. Adjutant General.

The Adjutant General, who is chief of staff;

[ 2001, c. 662, §16 (AMD) .]

**2. Senior staff officers.** The senior officer on duty with each of the staff sections organized under section 105; and

[ 1983, c. 460, §3 (NEW) .]

### 3. Other staff officers.

Other staff officers as appointed from time to time

[ 2001, c. 662, §16 (AMD) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §16 (AMD).

## §105. STAFF ORGANIZATION

The Governor may create, organize, abolish or reorganize staff sections that the Governor determines necessary to provide for the National Guard, other state military forces and the Maine Military Authority and appoint staff officers necessary to provide for the operation of the staff sections. Officers of those sections shall perform the duties required of them by law and those other duties not inconsistent with the laws of the State that correspond to the duties performed by officers in corresponding staff sections in the federal military establishment. [2003, c. 646, §4 (AMD).]

### 1. Personnel.

[ 1993, c. 680, Pt. A, §32 (RP) .]

### 2. Contracts, leases, agreements, authorizations, notes or bonds.

[ 1993, c. 680, Pt. A, §32 (RP) .]

### 3. Maine Veterans' Home Bonding Authority.

[ 1993, c. 680, Pt. A, §32 (RP) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §12 (AMD). 1993, c. 680, §A32 (RPR). 2003, c. 646, §4 (AMD).

## §106. ASSISTANT ADJUTANTS GENERAL

The Adjutant General may, subject to the approval of the Governor, appoint an assistant adjutant general for the Maine Army National Guard and an assistant adjutant general for the Maine Air National Guard, each with the qualifications set forth in section 107, who may hold the grade of brigadier general and shall serve at the pleasure of the Adjutant General. The assistant adjutant general for the Maine Army National Guard shall be responsible for the general supervision of training and administration of the Maine Army National Guard and the assistant adjutant general for the Maine Air National Guard shall be responsible for the general supervision of training and administration of the Maine Air National Guard. [1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §107. QUALIFICATIONS FOR APPOINTMENT OF ADJUTANT GENERAL AND ASSISTANT ADJUTANT GENERAL

A person appointed Adjutant General or assistant adjutant general must have attained the federally recognized rank of Colonel in the Maine National Guard and meet the criteria for federal recognition as a General Officer for either the United States Army National Guard or the United States Air National Guard as prescribed by federal service regulations. [2011, c. 112, §2 (AMD) .]

### 1. Hold commission.

[ 1999, c. 291, §1 (RP) .]

### 2. Service.

[ 1999, c. 291, §1 (RP) .]

### 3. Meet federal criteria for recognition.

[ 1999, c. 291, §1 (RP) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §3 (AMD). 1999, c. 291, §1 (RPR). 2011, c. 112, §2 (AMD).

## §108. DESIGNATION OF DEPUTY ADJUTANT GENERAL

The assistant adjutant general for the Maine Army National Guard or the assistant adjutant general for the Maine Air National Guard may be appointed as Deputy Adjutant General. The Deputy Adjutant General has all the military related powers, responsibilities and duties of the Adjutant General if the Adjutant General is unable to act, or in case of a vacancy in the office of the Adjutant General until the vacancy is filled by

the Governor, as provided by law. The Deputy Adjutant General may also perform other military duties of the Adjutant General as assigned by the Adjutant General or the Governor. [1991, c. 376, §64 (AMD).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 512, §1 (RPR). 1991, c. 376, §64 (AMD).

## **§109. DEPUTY ADJUTANT GENERAL AS BUREAU DIRECTOR**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 634, §4 (RP).

## **§110. OTHER STAFF; AIDES-DE-CAMP**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §17 (RP).

### **§110-A. HONORARY MILITARY STAFF**

The honorary military staff may consist of not more than 11 aides-de-camp commissioned by the Governor to serve during the Governor's term. Honorably discharged officers or enlisted personnel who served in the Army, Air Force, Navy, Coast Guard or Marine Corps during any war and who are not members of the state military forces may be appointed as aides-de-camp with the rank of colonel. One may be a naval aide with the rank of captain and one may be an Air Force aide with the rank of colonel. Aides-de-camp may be detailed from the commissioned officers of the state military forces, but officers so detailed may not be relieved from their regular duties, except when on duty with the Commander in Chief. [2001, c. 662, §18 (NEW).]

SECTION HISTORY

2001, c. 662, §18 (NEW).

### **§111. ENLISTED PERSONNEL**

As used in this chapter, "enlisted man" or "enlisted men" means enlisted personnel, male or female. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

### **§112. JOINT FORCE HEADQUARTERS**

The Adjutant General shall organize a staff to be called the Joint Force Headquarters. It shall command, control and supervise Army and Air National Guard units employed in support of civil authorities in the protection of life, property and preservation of peace, order and public safety under competent orders of state authorities. In the event of mobilization of some or all Army and Air National Guard units by the President of the United States, it shall assist the State in organizing and training a militia, if required, perform command and control functions in support of civil authorities, as directed, and prepare to reconstitute the Army National

Guard and Air National Guard when units are relieved from federal service. It must be commanded by a federally recognized officer who may be the Adjutant General or an Assistant Adjutant General. [ 2013 , c. 251, §3 (AMD). ]

## SECTION HISTORY

1985, c. 16, (NEW). 2001, c. 662, §19 (AMD). 2013, c. 251, §3 (AMD).

## Subchapter 2: ADMINISTRATION

### §141. MILITARY BUREAU ACCOUNTS; MILITARY FUND

All military accounts, unless otherwise specially provided by law, shall be approved by the person authorized to contract the accounts and transmitted to the Adjutant General for his examination and approval. They shall then be presented to the State Controller. [1983, c. 460, §3 (NEW). ]

For the current expenses of the state military forces, there shall be appropriated biennially a sum known as the "Military Fund" which is necessary for the proper administration of the Military Bureau. [1983, c. 460, §3 (NEW). ]

## SECTION HISTORY

1983, c. 460, §3 (NEW).

### §142. MILITARY PERSONNEL; APPOINTMENT OF OFFICERS; ENLISTMENT OF ENLISTED PERSONNEL

Except as otherwise provided in this chapter, the qualifications for appointment of officers and enlistment of enlisted personnel and the procedures for promoting, transferring, discharging, equipping, uniforming and training personnel of the state military force shall be consistent with federal laws and regulations prescribed for the National Guard. [1983, c. 460, §3 (NEW). ]

## SECTION HISTORY

1983, c. 460, §3 (NEW).

### §143. PAY AND ALLOWANCES

**1. Pay and allowances.** Members of the Maine National Guard ordered to active state service under this Title, except under section 150, are entitled to receive at least the same pay and allowance as would be payable to those persons from the United States Armed Forces. The member's pay, except for that pay of those members serving under section 150, must include a minimum pay based upon at least 12 hours a day at the state minimum wage.

[ 1997, c. 455, §13 (NEW) . ]

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §4 (AMD). 1997, c. 455, §13 (RPR).

## §144. CIVILIAN EMPLOYEES

The Commander in Chief may authorize the employment of civilian personnel in organizations in which there are vacancies of necessary personnel when the organizations are on duty under his orders or are called upon in aid of civil authorities. These civilian personnel, during this employment, are subject to the laws and regulations for the government of the state military forces and shall receive pay commensurate with these duties. [1983, c. 594, §5 (RPR).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §5 (RPR).

## §145. PROPERTY AND FISCAL OFFICER

The Governor shall, subject to the approval of the United States Secretary of the Army or the United States Secretary of the Air Force, designate a qualified commissioned officer of the Maine National Guard to be the United States property and fiscal officer. [1983, c. 460, §3 (NEW).]

**1. Status; United States property and fiscal officer.** The status of the United States property and fiscal officer shall be that of a National Guard commissioned officer of the Army or Air Force, as appropriate, on extended active duty and detailed with the United States Department of Defense, National Guard Bureau for administrative purposes.

[ 1983, c. 460, §3 (NEW) .]

**2. Bond.** The United States property and fiscal officer shall give a bond to the United States for the faithful performance of his duties and for the safekeeping and proper disposition of federal property and funds entrusted to his care. The amount of the bond shall be determined by the United States Secretary of the Army or the United States Secretary of the Air Force.

[ 1983, c. 460, §3 (NEW) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §146. PROPERTY PURCHASE

**1. Conflict of interest.** No officer authorized to make purchases or sales of military property may be personally interested, directly or indirectly, in the purchase or sale of the property; nor may an officer take pay other than that allowed by law for negotiating or transacting the business of his office.

[ 1983, c. 460, §3 (NEW) .]

**2. Inspection of property.** All property purchased under the authority of this chapter shall be inspected by an officer designated by the Adjutant General. No payment may be made for the property until the inspecting officer certifies that the property is of the kind and quality specified in the contract of purchase.

[ 1983, c. 460, §3 (NEW) .]

**3. Indebtedness contracted without authorization.** No officer or enlisted member may contract or authorize the contracting of any indebtedness on behalf of the State, unless expressly authorized to do so.

[ 2001, c. 662, §20 (AMD) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §20 (AMD).

## §147. RETIRED OFFICERS AND RETIRED LIST

Officers are retired from the state military forces and placed on the retired list as follows. [2001, c. 662, §21 (AMD).]

**1. Discharge.** Any officer who accepts an appointment in the Army, Air Force, Navy, Marine Corps or Coast Guard of the United States, or who resigns from service, must receive an honorable discharge, only if:

A. That person is not under arrest or returned to a military court for any deficiency or delinquency;

[2001, c. 662, §21 (AMD).]

B. That person is not indebted to the State in any manner; and [2001, c. 662, §21 (AMD).]

C. The accounts of that person for money and public property are correct. [2001, c. 662, §21 (AMD).]

[2001, c. 662, §21 (AMD).]

**2. Rights.** Any person who has served as a commissioned officer in the state military forces for at least 9 years may, upon personal request, be placed upon the retired list. When placed upon the retired list, an officer must be given the highest rank that person held and federally recognized during the person's term of service. Retired officers are entitled to wear the uniform of the rank with which they were retired. No commissioned officer in the state military forces may be removed from office without the person's consent, except by sentence of a court-martial or by a board of officers in a manner prescribed by law.

[2003, c. 583, §5 (AMD).]

**3. Active state service.** Whenever the occasion requires, the Governor, the Adjutant General or Deputy Adjutant General, with the individual's consent, may order to active state service any retired officer, warrant officer or enlisted person, with or without pay and allowances of that person's grade while performing the service.

[2001, c. 662, §21 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1995, c. 196, §A1 (AMD). 2001, c. 662, §21 (AMD). 2003, c. 583, §5 (AMD).

## §148. DISCHARGE

An enlisted person discharged from the state military forces shall receive a discharge in the form and with the classification prescribed for the federal military establishment. Discharges may be given prior to the expiration of periods of enlistment under these regulations, not inconsistent with those established by the national military establishment for the government of the National Guard, as the Governor may prescribe.

[1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §149. NEW ORGANIZATIONS

When authorized by the national military establishment, new organizations may be raised on petition to the Governor, or by his order. When the minimum number of persons required by law has been enlisted and notice thereof given to the Governor, he shall order an inspection to be made by an officer of the National Guard, and if it is found that the condition contemplated by law for federal recognition can be met by the new



organization, the Governor shall appoint commissioned officers for the new unit and request an inspection to be made by an officer of the national military establishment with a view to federal recognition. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §150. UNAUTHORIZED VOLUNTEER SERVICE

A unit of the state military forces may not perform any voluntary active state service, unless authorized by express order of the Governor. [1995, c. 196, Pt. A, §2 (AMD).]

An officer, warrant officer or enlisted person or any retired officer, retired warrant officer or retired enlisted person of the state military forces may not perform any voluntary active state service, unless authorized by express order of the Governor, the Adjutant General or the Deputy Adjutant General. [1995, c. 196, Pt. A, §2 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1995, c. 196, §A2 (AMD).

### §151. MILITARY LODGING FUND

The Military Bureau may operate and maintain lodging facilities for military personnel and collect a quarters fee on behalf of both the federal government and the Military Bureau. The fees will fund these lodging facilities. That portion of the fees due the Federal Government will be transferred to the United States Property and Fiscal Officer on a quarterly basis or as requested. Any balances remaining at the end of the fiscal year do not lapse but must be carried forward to be used for the purposes stated in this section. [1997, c. 455, §14 (AMD).]

#### SECTION HISTORY

1983, c. 594, §6 (NEW). 1997, c. 455, §14 (AMD).

### §152. ARMORY RENTAL FUND; AUTHORITY TO RENT ARMORIES, READINESS CENTERS AND OTHER REAL PROPERTY

**1. Fund established.** The Armory Rental Fund is established in the Military Bureau as a nonlapsing fund to assist in defraying the operation and maintenance expenses of the Military Bureau's state-owned facilities. Funds in the Armory Rental Fund are in addition to appropriations for these purposes made to the Military Fund.

[ 1995, c. 684, §2 (NEW); 1995, c. 684, §5 (AFF) .]

**2. Rental proceeds.** Except as provided in section 353-A, rental proceeds from the rental of armories, readiness centers and other real property under this section must be paid into the State Treasury and credited to the Armory Rental Fund to be used for operation and maintenance expenses at the various state-owned facilities of the Military Bureau and for pay and allowances for members called to active state service under section 181-A, subsection 5. Rental proceeds credited to the Armory Rental Fund are in addition to the appropriations made for operation and maintenance expenses included for that purpose in the Military Fund.

[ 2017, c. 108, §3 (AMD) .]

**3. Waiver of rental fees.** The Adjutant General or the Adjutant General's designee may waive rental fees under this section for certain youth and charitable organizations under 32 United States Code, Section 508 or as otherwise designated by the Adjutant General.

[ 2017, c. 108, §3 (NEW) .]

#### SECTION HISTORY

1995, c. 684, §2 (NEW). 1995, c. 684, §5 (AFF). 2003, c. 488, §1 (AMD). 2003, c. 488, §5 (AFF). 2015, c. 465, Pt. D, §1 (AMD). 2017, c. 108, §3 (AMD).

### **§153. AUTHORITY TO RENT ARMORIES, READINESS CENTERS AND OTHER REAL PROPERTY**

The Military Bureau may rent armories, readiness centers and other real property for activities that do not conflict with the military training mission. [2017, c. 108, §4 (AMD).]

#### SECTION HISTORY

1995, c. 684, §2 (NEW). 2017, c. 108, §4 (AMD).

### **§154. CAPITAL REPAIR, MAINTENANCE, CONSTRUCTION AND ACQUISITION ACCOUNT**

Except as provided in section 353-A, the Capital Repair, Maintenance, Construction and Acquisition Account is established in the Military Bureau as a nonlapsing fund to assist in defraying the capital repair, maintenance and construction of state-owned properties of the Military Bureau, as well as purchasing land for training sites. The bureau may not spend \$500,000 or more for any single capital repair, maintenance or construction project or land acquisition unless that expenditure is approved in advance by the Legislature. Not later than January 1st of each odd-numbered year, the bureau shall submit a list to the Legislature that identifies the location, nature and cost of each planned capital repair, maintenance and construction project and land acquisition costing less than \$500,000. [2015, c. 465, Pt. D, §2 (AMD).]

#### SECTION HISTORY

1995, c. 684, §2 (NEW). 2003, c. 488, §2 (AMD). 2003, c. 488, §5 (AFF). 2013, c. 469, §2 (AMD). 2015, c. 465, Pt. D, §2 (AMD).

### **§155. REIMBURSEMENT FUND**

The Maine National Guard may provide services in accordance with section 181-A, subsections 4 and 5 and section 183 for federal, state, county, regional and municipal governments and agencies and nongovernmental entities and may charge for those services. Except as provided in section 353-A, the fees collected must first be allocated for funding the cost of providing those services, and any remaining fees may be expended only within the Military Bureau. [2015, c. 465, Pt. D, §3 (AMD).]

#### SECTION HISTORY

1997, c. 455, §15 (NEW). 2001, c. 353, §1 (AMD). 2003, c. 488, §3 (AMD). 2003, c. 488, §5 (AFF). 2015, c. 465, Pt. D, §3 (AMD).

### **§156. LORING CENTER OF EXCELLENCE OPERATIONS AND MAINTENANCE FUND**

The Loring Center of Excellence Operations and Maintenance Fund is established in the Military Bureau as a nonlapsing fund in order that the Commissioner of the Department of Defense, Veterans and Emergency Management may accept funds from the Department of Defense, Department of the Army, Department of the

Air Force, Department of the Navy or the National Guard Bureau, or any instrumentality thereof, as necessary to carry out the purpose of any cooperative agreement between the Military Bureau and the Department of Defense, Department of the Army, Department of the Air Force, Department of the Navy or the National Guard Bureau, or any instrumentality thereof. The Treasurer of the State shall credit all interest on fund balances to the Loring Center of Excellence Operations and Maintenance Fund. [1999, c. 401, Pt. K, §3 (NEW); 2001, c. 374, §9 (AFF).]

#### SECTION HISTORY

1999, c. 401, §K3 (NEW). 2001, c. 374, §9 (AFF).

## §157. MAINE MILITARY AUTHORITY ENTERPRISE FUND

**1. Maine Military Authority Enterprise Fund; established.** The Maine Military Authority Enterprise Fund is established to fund activities of the Maine Military Authority, established in section 391, including, but not limited to, the following:

A. Operating the Maine Readiness Sustainment Maintenance Center; and [2003, c. 646, §5 (NEW).]

B. Maintaining, rebuilding, repairing, storing and manufacturing equipment for the following:

(1) The State and its political subdivisions;

(2) The United States Department of the Army, Department of the Air Force, Department of the Navy and Department of Homeland Security; and

(3) Foreign governments working in conjunction with the foreign military sales program of the United States Department of Defense. [2003, c. 646, §5 (NEW).]

[2003, c. 646, §5 (NEW).]

**2. Maine Military Authority Enterprise Fund account.** The Military Bureau shall establish, through the Department of Administrative and Financial Services, Bureau of Accounts and Control, the Maine Military Authority Enterprise Fund account. The funds deposited in the account include, but are not limited to, the following:

A. Appropriations made to the account; [2003, c. 646, §5 (NEW).]

B. Funds transferred to the account from within the department; [2003, c. 646, §5 (NEW).]

C. Funds received for the purposes stated in subsection 1, paragraph B; [2003, c. 646, §5 (NEW).]

D. Earnings from the fund from the Treasurer of State's cash pool; and [2003, c. 646, §5 (NEW).]

E. In accordance with applicable law, proceeds from the sale of vehicles and equipment under the administrative control of the Maine Military Authority by the state surplus property program in the Department of Administrative and Financial Services, Bureau of General Services. [2003, c. 646, §5 (NEW).]

[2003, c. 646, §5 (NEW).]

**3. Receive revenue; expend proceeds.** The Adjutant General may receive operating revenues of the Maine Military Authority and expend those proceeds in accordance with section 399.

[2003, c. 646, §5 (NEW).]

**4. Fund flexibility and adjustments.** Notwithstanding the provisions of Title 5, section 1585, in order to provide sufficient flexibility to adjust to market forces, adjustments to the Maine Military Authority Enterprise Fund may be made through financial orders recommended to the Governor by the State Budget Officer.

[ 2005, c. 12, Pt. MMM, §1 (NEW) .]

**5. No obligation of state funds.** If revenues or other sources of operating funds are not sufficient or available as anticipated for the Maine Military Authority Enterprise Fund, there is no obligation to provide state funds.

[ 2005, c. 12, Pt. MMM, §1 (NEW) .]

**6. Quarterly reports.** The Maine Military Authority shall provide quarterly financial statements regarding the Maine Military Authority Enterprise Fund in a format prescribed by the State Controller to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over the Maine Military Authority.

[ 2005, c. 12, Pt. MMM, §1 (NEW) .]

#### SECTION HISTORY

2001, c. 374, §7 (NEW). 2003, c. 646, §5 (RPR). 2005, c. 12, §MMM1 (AMD).

## §158. MAINE MILITARY FAMILY RELIEF FUND

The Maine Military Family Relief Fund, referred to in this section as "the fund," is established as a nonlapsing fund in the department administered according to rules adopted by the Adjutant General. The funds deposited in the fund include, but are not limited to, fines imposed by the court on any person convicted under Title 17-A, section 354, subsection 2, paragraph A of theft by deception due to that person's intentional creation or reinforcement of a false impression that the person is a veteran or a member of the Armed Forces of the United States or a state military force. The Adjutant General is authorized to award loans and grants from the fund for emergencies and other special needs to members or families of members of the Maine National Guard or residents of the State who are members or families of members of the Reserves of the Armed Forces of the United States and to distribute funds to a statewide nonprofit organization established for the purpose of providing assistance to members or families of members of the Maine National Guard or residents of the State who are members or families of members of the Reserves of the Armed Forces of the United States. The Adjutant General is authorized to distribute money from the fund to state military welfare societies that the Adjutant General has designated in accordance with section 3, subsection 1, paragraph D, subparagraph (22) for the purpose of providing emergency relief to members of the state military forces and their families in accordance with this section and rules adopted in accordance with this section. The Adjutant General shall require that funds distributed to a designated military welfare society must be segregated from all other funds administered by the society and shall require regular reports on how the society distributed the funds. The Military Bureau shall adopt rules establishing eligibility criteria for the loans and grants. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2017, c. 114, §3 (AMD) .]

### 1. We Support Our Troops Advisory Board.

[ 2011, c. 344, §33 (RP) .]

#### SECTION HISTORY

2003, c. 703, §2 (NEW). 2009, c. 481, §6 (AMD). 2011, c. 344, §33 (AMD). 2013, c. 424, Pt. A, §29 (AMD). 2015, c. 437, §3 (AMD). 2017, c. 114, §3 (AMD).

## Subchapter 3: ACTIVATION OF STATE MILITARY FORCES

### §181. AUTHORITY TO ACTIVATE

*(REPEALED)*

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1989, c. 850, §4 (AMD). 1995, c. 600, §1 (RP).

### §181-A. AUTHORITY TO ACTIVATE

**1. By order of the Governor.** The Governor may order members of the state military forces to active state service in the case of, or imminent danger of, insurrection, invasion, tumult, riot, conspiracy to commit a felony or threat of violence to persons or property or upon the reasonable apprehension thereof; or for the safety of the inhabitants of this State; or, in the case of actual or imminent public disaster, to the aid of any civil authority.

[ 1995, c. 600, §2 (NEW) . ]

**2. By order of a justice or sheriff.** In case of, or in the event of imminent danger of, insurrection, invasion, tumult, riot or conspiracy to commit a felony, to offer violence to persons or property or by force to break the laws of this State or the United States, a Justice of the Supreme Judicial Court or a Justice of the Superior Court or a county sheriff may request in writing aid from a commanding officer in the state military forces. The commanding officer to whom the request is made shall order out, in aid of the civil authorities, all or part of the military forces under that commanding officer's command and shall immediately report to the Adjutant General and to that commanding officer's military superior for further instructions. The commanding officer may receive only general directions from the civil authority requesting the aid and remains strictly responsible to the commanding officer's military superior for the manner in which the troops are used to accomplish the desired end.

[ 1995, c. 600, §2 (NEW) . ]

**3. Upon request of local officials.** In the event of an emergency requiring immediate action, the commanding officer, upon written request of the mayor of a city, the municipal officers of a town or a municipality, may order out, for the defense or protection of the community, the forces under the commanding officer's command or any part of those forces. The commanding officer shall immediately report to the Adjutant General and to the commanding officer's immediate commanding officer for further instructions.

[ 1995, c. 600, §2 (NEW) . ]

**4. Drug enforcement duties.** The Governor may order Maine National Guard members to active state service to support federal drug enforcement operations under the National Defense Authorization Act of 1989. The Maine National Guard may receive forfeited money and assets seized through federal counter-drug activities in which members of the Maine National Guard participated. The Maine National Guard must use money or assets acquired pursuant to this subsection in support of counter-drug activities. For purposes of this subsection, "counter-drug activities" means activities that are intended to reduce the supply or use of illegal drugs in the State.

[ 2015, c. 120, §1 (AMD) . ]

**5. Military duty by consent.** The Governor, or the Governor's designee, may order a member of the Maine National Guard, with that member's consent, to perform active state service of any nature.

[ 1995, c. 600, §2 (NEW) .]

#### SECTION HISTORY

1995, c. 600, §2 (NEW). 2015, c. 120, §1 (AMD).

## §182. PROCLAMATION OF STATE OF INSURRECTION

Whenever any portion of the state military forces is activated in aid of civilian authority and if, in the Governor's judgment, the maintenance of law and order will thereby be promoted, the Governor, by proclamation, may declare the county or municipality receiving the assistance, or any specified portion or combination, to be in a state of insurrection. [1995, c. 600, §3 (AMD).]

In the event of a proclamation of insurrection, and without limiting any other powers of the Governor, whether inherent or conferred by other existing laws, the Governor may issue rules under the emergency rule-making provisions of the Maine Administrative Procedure Act, Title 5, section 8054 that are reasonable under the circumstances to avert additional damage, destruction, injury or loss of life, including, but not limited to, emergency rules for curfews, the deployment of emergency medical supplies and facilities, evacuations, the closing of liquor, arms, ammunition, explosives or other stores and facilities, access roads, temporary detours and other things, whether of a same or a different nature. [1995, c. 600, §3 (AMD).]

In the event of the call up of military forces, pursuant to section 181-A, subsection 1, and without limiting any powers expressly and inherently possessed by or otherwise vested in the Governor as Commander in Chief, the Governor or Adjutant General, as the Governor's designee, may petition any Superior Court for ex parte temporary restraining orders to restrain unlawful interference with efforts to maintain peace or preserve life and property. The court may grant appropriate temporary relief. Upon issuance of the order, the Governor shall cause prompt notice of the order and its effect to be broadcast, posted, announced or otherwise publicized so as to reach the persons effected. Any person aggrieved by the order is entitled at any time it is in effect to bring a motion for vacating the order. The motion must lie in the court from which the order was issued and the moving parties shall serve notice of the motion upon the Governor concurrent with it being filed, but, until vacated, the order remains effective according to its terms. [1995, c. 600, §3 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §7 (AMD). 1995, c. 600, §3 (AMD).

## §183. HUMAN HEALTH EMERGENCIES

Personnel and equipment of the Maine National Guard may be employed in the case of human health emergencies. [1995, c. 600, §4 (AMD).]

**1. Activation of Maine National Guard.** In the event of illness, injury, missing persons or loss of life, creating an emergency that requires specialized personnel or equipment of the Maine National Guard to prevent human suffering, increased health risk or loss of life, the Governor or the Governor's designee may order into active state service the necessary personnel and equipment of the Maine National Guard. Human health emergencies may include medical evacuation and search and rescue under Title 6, section 303 and Title 12, section 10105, which may include providing emergency helicopter airlift service. Any person ordered into active state service, for the purposes of this subsection, is considered a state employee for purposes of the Maine Tort Claims Act and that person's liability is limited by that Act.

[ 2003, c. 414, Pt. B, §69 (AMD); 2003, c. 614, §9 (AFF) .]

**2. Immunity from civil liability.** In addition to all existing tort immunities enumerated in the Maine Tort Claims Act any person ordered into active state service, for the purposes of this section, is immune from civil liability for damages to the same extent as any person who renders assistance pursuant to Title 14, section 164.

[ 1995, c. 600, §4 (AMD) .]

**3. Accounting.** At least 30 days before the end of each fiscal year, the Adjutant General shall prepare an accounting of all expenses incurred pursuant to this section since any prior accounting and shall present this accounting to the Commissioner of Health and Human Services for payment.

[ 1995, c. 600, §4 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

#### **4. Reimbursement.**

[ 1995, c. 600, §4 (RP) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §8 (AMD). 1987, c. 334, (AMD). 1995, c. 600, §4 (AMD). 2003, c. 414, §B69 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 614, §9 (AFF). 2003, c. 689, §B7 (REV).

## **§184. NOTICE FOR DUTY**

Notices for military duty must be given as follows. [1995, c. 600, §5 (AMD) .]

**1. When given.** Members of the state military forces must receive reasonable prior notice of active state service appropriate to the duty to be performed.

[ 1995, c. 600, §5 (AMD) .]

**2. How given.** Notices may be given orally or in writing. Orders conspicuously posted during a regular meeting of the unit, not less than 4 days prior to the date fixed in the order, are sufficient.

[ 1995, c. 600, §5 (AMD) .]

**3. Dates fixed by law.** When drill dates have been fixed by law, orders or regulations, no further notice is required.

[ 1995, c. 600, §5 (AMD) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1995, c. 600, §5 (AMD).

## **§185. RIGHTS AND LIABILITIES OF MILITARY FORCE MEMBERS**

**1. Immunity from civil and criminal liability.** A member of the state military forces may not be liable civilly or criminally for any act done or caused, ordered or directed to be done by that member while on active state service in the performance of that member's duty. If an action of any nature has been commenced in any court by any person against an officer or enlisted member of the state military forces for such an act, done or caused, ordered or directed to be done, all expenses of the defense of the action, including fees of witnesses for the defense, defendant's court costs, and all costs for transcripts of records and abstract thereof on appeal, must be paid by the State out of the Military Fund. When the action is civil, it is the duty of the Attorney General to defend that officer or enlisted member. When the action is criminal, the Adjutant General shall designate a judge advocate of the National Guard or other authorized state military or naval force to conduct

the defense of the member. If the services of a judge advocate are not available, the Adjutant General shall select some other competent attorney to conduct the defense. In any civil action, the defendant may require the person instituting the action to file security for payment of costs that may be awarded the defendant, which costs, if paid out of the Military Fund, when received, must be paid into the State Treasury and credited to the Military Fund.

[ 1995, c. 196, Pt. B, §2 (AMD) .]

**1-A. Immunity from civil and criminal liability for supervising physician.** Subsection 1 applies to the supervising physician of a physician assistant under Title 32, section 2594-E or 3270-E:

A. With regard to any act of the physician assistant in providing services to individuals not on active state service; [2009, c. 587, §1 (NEW).]

B. When the physician assistant is on active state service in the performance of the physician assistant's duty; and [2009, c. 587, §1 (NEW).]

C. When the supervising physician is not on active state service. [2009, c. 587, §1 (NEW).]

[ 2015, c. 242, §6 (AMD) .]

**2. Exemption from arrest.** Persons belonging to the state military forces are exempt from arrest as follows.

A. Every person belonging to the state military forces, in all cases except a crime punishable by a maximum term of imprisonment equal to or exceeding one year or breach of the peace, is privileged from arrest while going to, attending or returning from active state service or federal military duty. [2001, c. 662, §22 (AMD).]

B. On the day of any active state service or federal military duty, no officer or enlisted member may be arrested in a civil action or mesne process, or on a warrant for taxes; nor may that person be arrested on the day of annual Thanksgiving; Patriots' Day; Memorial Day; July 4th; Labor Day; Veterans' Day, November 11th; or Christmas. [2001, c. 662, §22 (AMD).]

[ 2001, c. 662, §22 (AMD) .]

**3. Exemption from jury duty.** Every member of the state military forces, while going to, attending or returning from active state service or federal military duty, is exempt from jury duty. Production of a certificate from the claimant's commanding officer that the person qualifies for the exemption is prima facie proof that the person is entitled to the exemption.

[ 2001, c. 662, §22 (AMD) .]

**4. Rights of a law enforcement officer.** A commissioned officer of the state military forces when called to active state service under section 181-A, subsection 1, in addition to such other rights conferred by this chapter and otherwise by law, has the rights, authority and immunities of a law enforcement officer.

[ 2001, c. 662, §23 (AMD) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §§9,10 (AMD). 1995, c. 196, §B2 (AMD). 1995, c. 600, §6 (AMD). 2001, c. 662, §§22,23 (AMD). 2009, c. 587, §1 (AMD). 2015, c. 242, §6 (AMD).



## §186. INJURIES SUSTAINED IN CONNECTION WITH MILITARY DUTY

**1. Compensation as state employee.** A member of the state military forces receives compensation as a state employee according to the provisions of Title 39-A and this section.

A. Duty status is as follows.

(1) The types of duty that are covered are:

(a) Active state service as defined by section 101-A, whether performed with or without compensation.

(2) The types of duty that are not covered are:

(d) Federal technician civilian duty under the United States Code, Title 32, Section 709; and

(e) Military duty performed pursuant to the United States Code, Title 10. [ 2001, c. 662, §24 (AMD) . ]

B. Types of injuries cognizable are as follows:

(1) The injury, disability or disease must have been received, incurred or contracted while in active state service;

(2) Service members must be under the control and supervision of the military. Incidents occurring during periods of leave or pass are not compensable; and

(3) An injury, disability or disease received not incident to duty or contracted with willful negligence or misconduct is not compensable. [ 2001, c. 662, §24 (AMD) . ]

C. Preconditions for benefits under Title 39-A are as follows:

(1) Federal income maintenance benefits must be applied for and, if they exceed comparable Title 39-A benefits, must be exhausted by the member before receiving weekly compensation benefits under Title 39-A. Medical care at military or Veterans' Administration facilities, civilian care paid for by the military forces and other benefits furnished by the military force or the Veterans' Administration, including military programs offered to retrain or occupationally rehabilitate the service member, must be used before entitlement to benefits under Title 39-A. Military programs are fully creditable under Title 39-A in an approved plan of rehabilitation; and

(2) Title 39-A benefits are based on inability to perform the service member's usual occupation. [ 2001, c. 662, §24 (AMD) . ]

D. For the purpose of calculation of compensation, average weekly wage must be computed solely on the earning capacity of the injured member in the occupation in which that member is regularly engaged. In case of death, dependents are entitled to compensation as provided in Title 39-A and any amendments to that Title. [ 2001, c. 662, §24 (AMD) . ]

E. If the member is eligible for military or Veterans' Administration care and knowingly declines or through the member's actions forfeits rights to federal care benefits, the member is not entitled to compensation for civilian care under Title 39-A. [ 2001, c. 662, §24 (AMD) . ]

F. All federal benefits received by the member as a result of an injury, disability or disease are considered to be derived from the employer and constitute a setoff to compensation awarded as a result of this section. A dollar-for-dollar setoff is authorized for all benefits to include continuation of federal pay and allowances, incapacitation pay, severance pay, disability retirement pay, Veterans' Administration disability payments and military and Veterans' Administration death benefits. [ 2001, c. 662, §24 (AMD) . ]

G. Reporting pursuant to Title 39-A does not have to be initiated until a final decision is reached on the injured service member's entitlement to federal benefits or while military or veterans' disability benefits are received in lieu of compensation under Title 39-A, whichever ceases first. Veterans' disability benefits provided in this subsection include state military duty pay received under section 143, federal continuation pay or incapacitation pay in lieu of benefits under Title 39-A. The time provisions of Title

39-A commence upon notification to the service member that federal benefits are not authorized, or the gross monetary federal benefits are determined to be less than the entitlements under Title 39-A without taking into account the setoff prescribed in paragraph E. [2001, c. 662, §24 (AMD).]

[ 2001, c. 662, §24 (AMD) .]

**2. Average weekly wage; death benefits.**

[ 1987, c. 271, (RP) .]

**3. Setoff.**

[ 1987, c. 271, (RP) .]

**4. Federal pay status.**

[ 1987, c. 271, (RP) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 271, (RPR). 1987, c. 769, §§A162,A163 (AMD). 1991, c. 885, §E44 (AMD). 1991, c. 885, §E47 (AFF). 1995, c. 196, §B3 (AMD). 2001, c. 662, §24 (AMD).

## §187. BOUNDS AND LIMITS OF CAMPS

The bounds and limits of camps may be fixed and intrusion within those limits may be restricted as follows. [1983, c. 460, §3 (NEW).]

**1. Fixing the limits.** Every commanding officer on duty may fix necessary bounds and limits to his camp or parade. In doing so, he may not prevent passage along a through road. By order of the Governor, the commanding officer may, as described in subsection 2, restrict use or passage through an extended area not more than 1/2 mile around the camp. The owners of land within that surrounding security area and their agents shall not be prevented from using, occupying or improving their land in the same manner as they were accustomed to do at the time the camp was occupied.

[ 1983, c. 460, §3 (NEW) .]

**2. Confinement of intruders.** Any person who intrudes within the fixed limits after being forbidden, or resists a sentinel attempting to put or keep him out of those limits, or disturbs, interrupts or otherwise hinders the passage of troops or the discharge of their duty, may be confined under guard for up to 14 hours at the discretion of the commanding officer.

[ 1983, c. 460, §3 (NEW) .]

**3. Intoxicating beverages.** The commanding officer of any camp or armory may prohibit the introduction or sale of any intoxicating beverage within the necessary or extended limits of the camp or armory.

[ 1983, c. 460, §3 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW).

## §188. CLOSING OF STORES

*(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 2003, c. 583, §6 (RP).

**§189. REEMPLOYMENT RIGHTS**

*(REPEALED)*

## SECTION HISTORY

1983, c. 594, §11 (NEW). 1987, c. 285, §2 (RP).

**§190. SECURITY AT NATIONAL GUARD MILITARY FACILITIES AND REAL PROPERTY OF THE DEPARTMENT**

This section governs the provision of security at National Guard military facilities and real property of the department. [2017, c. 108, §5 (NEW).]

**1. Appointment of a provost marshal.** The Adjutant General may appoint a provost marshal to oversee security at National Guard military facilities and real property consistent with federal regulations governing similar federally owned facilities located in the State.

[ 2017, c. 108, §5 (NEW) .]

**2. Designation of military facilities.** For purposes of this section, the Adjutant General may designate all or portions of department facilities or real property of the department as military facilities.

[ 2017, c. 108, §5 (NEW) .]

**3. Funding.** Modifications of National Guard military facilities or real property of the department or changes to protocols or procedures or actions to provide security in a manner consistent with federal regulations governing similar federally owned facilities in the State are limited to those that are without cost or are federally funded either directly or indirectly through a cooperative agreement.

[ 2017, c. 108, §5 (NEW) .]

## SECTION HISTORY

2017, c. 108, §5 (NEW).

**Subchapter 4: SPECIAL PROVISIONS GOVERNING STATE  
MILITARY FORCES OTHER THAN THE NATIONAL GUARD****§221. OTHER STATE MILITARY COMPONENTS**

**1. Organization.** When necessary to provide for the adequate protection of the State, the Governor as Commander in Chief may organize as components of the state military forces an adequate number of Army and Navy units for the length of time which he directs. Those components shall consist of the militia, the naval militia and the Maine State Guard.

[ 1983, c. 460, §3 (NEW) .]

**2. Duties.** In the event of the organization of other forces described in subsection 1, those units may be ordered by the Governor to perform duties which he directs, including duties that the National Guard would be called to perform, consistent with this chapter and other applicable laws.

[ 1983, c. 460, §3 (NEW) .]

**3. Maine Code of Military Justice.** All persons serving in the militia, naval militia and Maine State Guard shall be subject to the Maine Code of Military Justice while in an active state duty status.

[ 1983, c. 460, §3 (NEW) .]

**4. Applicability of provisions.**

[ 2001, c. 662, §25 (RP) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §25 (AMD).

## §222. MILITIA

The militia shall consist of all able-bodied citizens of the State, or able-bodied persons who have declared their intention to become citizens of the United States, who are at least 18 years of age and not more than 45 years of age, and who are enrolled pursuant to section 225, or who have been enlisted, appointed or commissioned. [1983, c. 460, §3 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW) .

## §223. NAVAL MILITIA

**1. Composition.** The naval militia of the State of Maine shall consist of such persons as may be enlisted, appointed or commissioned therein from the militia.

[ 1983, c. 460, §3 (NEW) .]

**2. Administration.** The Commander in Chief may organize the forces prescribed in subsection 1 as he deems proper. When in his judgment the efficiency of the naval militia will be increased thereby, or whenever public interest may demand it, he may alter, reorganize or disband any or all of the naval militia. He may, at any time, change the organization of the naval militia so as to conform to any organization, or system of drill or instruction adopted for the United States Navy, and increase and decrease for that purpose the number of officers, warrant officers, chief petty officers, petty officers and enlisted men and to change their grades, titles and designations.

The system of administration, drill and instruction of the naval militia shall conform, as nearly as practicable, to that of the United States Navy.

[ 1983, c. 460, §3 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW) .

## §224. MAINE STATE GUARD

The Governor may organize and maintain within this State in time of peace or war or other emergency, the Maine State Guard, which organization and maintenance of the Maine State Guard shall be consistent with federal regulations prescribing the organization, standard of training, instruction and discipline of state military forces. [1983, c. 460, §3 (NEW) .]

**1. Composition.** When activated, the Maine State Guard shall be composed of those persons enlisted, appointed or commissioned from the militia and other able-bodied citizens of the State and such other able-bodied soldiers and sailors who have previously served honorably in the United States Armed Services or the National Guard. A person may not become a member of the Maine State Guard, if he is a member of the National Guard or any component of the United States Armed Forces, active or reserve.

[ 1983, c. 460, §3 (NEW) . ]

**2. Administration; rules.** The Governor may from time to time prescribe rules not inconsistent with this section, for the enlistment, designation and location of units, and the organization, administration, equipment, maintenance, training and discipline of the Maine State Guard. The organization shall not conflict with the laws of the United States or of this State as applicable to the state military forces, generally. These rules, insofar as the Governor deems practicable and desirable, shall conform to existing laws, rules and regulations pertaining to the National Guard. The oath to be taken by officers and enlisted men in the Maine State Guard shall be substantially the same as that prescribed for officers and enlisted men of the National Guard. The words "Maine State Guard" shall be substituted where necessary. The term of service of officers or enlisted men in the Maine State Guard shall be the same as that prescribed for officers and enlisted men of the National Guard.

[ 1983, c. 460, §3 (NEW) . ]

**3. Officers; appointment; authority.** The Governor, acting by and through the Adjutant General, shall appoint officers for such units and organizations of the Maine State Guard as he may establish in conformance with applicable federal regulations, and these officers shall, subject to removal by the Commander in Chief, exercise the same military authority over their several commands as officers of the National Guard.

[ 1983, c. 460, §3 (NEW) . ]

**4. Pay and allowances.** The pay and allowances of members of the Maine State Guard when called to active state service are the same as provided in section 143. When the Maine State Guard is organized for inspection and drill purposes only, no pay is authorized.

[ 2001, c. 662, §26 (AMD) . ]

**5. Requisitions.** For the use of the Maine State Guard, the Governor may requisition from the United States Secretary of the Army arms, ammunition, clothing and equipment which the United States Secretary of the Army in his discretion, and under regulations determined by him, may issue and may make available to the Maine State Guard the facilities of state armories and their equipment and other state premises and property which are available.

[ 1983, c. 460, §3 (NEW) . ]

**6. Enlistment of civil groups.** No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league or other combination of persons or civil group may be enlisted in the Maine State Guard as an organization or unit.

[ 1983, c. 460, §3 (NEW) . ]

**7. Federal service.** Nothing in this subsection may be construed as authorizing the Maine State Guard or any part thereof, to be called, ordered or in any manner drafted as a unit into the military service of the United States. No person may, by reason of his enlistment or commission in the Maine State Guard, be exempted from military service under any law of the United States.

[ 1983, c. 460, §3 (NEW) . ]

**8. Disqualifications.** No person may be commissioned or enlisted in the Maine State Guard who has been expelled or dishonorably discharged from any military or naval organization of this State, of another state or of the United States, or who has been convicted of a felony in any court of this State, of another state or of the United States.

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §26 (AMD).

## §225. ENROLLMENT OTHER THAN NATIONAL GUARD

**1. Citizen enrollment; penalty for noncompliance.** Each citizen who is more than 18 years of age and less than 45 years of age, unless exempted by order of the Governor, who is a resident of this State, shall, whenever the Governor deems it necessary, be enrolled with the militia. Each citizen shall be enrolled in the municipality in which he resides by the assessor or assessors for that municipality according to rules which the Governor may prescribe.

Any person knowingly refusing to give required information concerning himself or another person who is required to be enrolled, or giving false information to an assessor making the enrollment, is for each act of concealment, refusal or falsification guilty of a Class E crime. Within 10 days, the assessor making the enrollment shall report all persons violating this subsection to the Adjutant General.

[ 1983, c. 460, §3 (NEW) .]

**2. Exemptions.** The Vice-President of the United States; judicial and executive officers of the government of the United States and of the several states and territories; persons in the military or naval service of the United States; customhouse clerks; persons employed by the United States in the transmission of the mail, artificers and workmen employed in the armories, arsenals and navy yards of the United States; pilots; mariners actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from militia duty without regard to age. All persons, who because of religious belief, claim exemption from militia service, if the conscientious holding of that belief by that person shall be established under regulations prescribed by the President, shall be exempted from militia service in a combatant capacity. A person exempted because of religious beliefs shall not be exempt from militia service in a capacity that the President declares to be noncombatant.

[ 1983, c. 460, §3 (NEW) .]

**3. Burden of proof in exemption.** Any person claiming exemption shall satisfy the assessor of his right to the exemption. In case of doubt, the burden of proof shall be upon the person claiming exemption. The assessor may require him to submit to examination under oath and may administer the oath.

[ 1983, c. 460, §3 (NEW) .]

**4. Responsibilities of assessor and clerk; penalty for failure to perform.** On the roll, opposite the name of each person who is exempt from duty under subsection 2, or who is serving in the active state or federal military forces, or who is unable by reason of physical disability to perform military duty, the assessor shall write the word "exempt" and state in each case the cause of the exemption. The assessor shall subscribe the list and make oath that the list is true to the best of his knowledge and belief, and shall immediately file the list with the clerk of the municipality. Within 10 days, the clerk shall make a certified statement of the total number enrolled, the number marked exempt with the reason for exemption and the number in active service. The clerk shall forward the statement to the Military Bureau. Any assessor neglecting or refusing

faithfully to perform the enrolling duties required by law, making a false entry upon the rolls or committing any other related fraud and any clerk neglecting to make and forward the statement required is guilty of a Class E crime.

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### Subchapter 5: UNIFORMS AND EQUIPMENT

#### **§261. OFFICERS PROVIDE OWN UNIFORMS AND EQUIPMENT**

All commissioned officers and warrant officers in the state military forces shall provide themselves with uniforms and equipment required by federal regulation. The Adjutant General may purchase and issue as state property on memorandum receipt or sell for cash to these officers the necessary uniforms and equipment.

[1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

#### **§262. EXEMPTION FROM ATTACHMENT AND DISTRESS**

The clothes, arms, military outfit and accoutrements furnished by or through the State to, or required of, a member of the state military forces are not subject to any civil action, distress, execution or sale for debt or payment of taxes. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

#### **§263. REPAIR OF EQUIPMENT**

The Adjutant General shall make arrangements for the necessary repair, cleansing and renovation of all clothes, arms, military outfits or accoutrements of the state military forces. If the repair, cleansing or renovation is due to the negligence of a member, the cost shall be charged against pay due, or to become due, to the member or recovered in the same manner as a forfeiture under the Maine State Code of Military Justice. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

#### **§264. INSPECTION AND CONDEMNATION**

**1. Sale of property; proceeds.** The Adjutant General shall designate an officer to inspect military property, real and personal, and may condemn any inspected property that the Adjutant General determines to be unfit for use by the military. Property condemned under this subsection may be sold by the Adjutant General. Real property condemned under this subsection may not be sold for less than its appraised value as determined by a person licensed as a real estate appraiser under Title 32, chapter 124.

All proceeds from the sale of condemned property must be paid into the State Treasury and credited to the Capital Repair, Maintenance, Construction and Acquisition Account of the Military Bureau established under section 154.

[ 2013, c. 469, §3 (AMD) .]

**2. Designation of property; sale.** The Adjutant General may sell an armory or other real property of the Military Bureau if the Adjutant General has:

- A. Completed the appraisal required under subsection 1; and [1995, c. 684, §3 (NEW).]
- B. Except as provided in subsection 3, obtained approval of the Legislature to sell that armory or other real property. For the purposes of this subsection, the term "approval of the Legislature" means the enactment by the Legislature and signing by the Governor of a resolve authorizing the sale of that armory or other real property. [1995, c. 684, §3 (NEW).]

All proceeds of the sale of an armory or other real property under this subsection must be paid into the State Treasury and credited to the Capital Repair, Maintenance, Construction and Acquisition Account of the Military Bureau established under section 154.

[ 2013, c. 469, §4 (AMD) .]

**3. Exceptions; authorization to sell.** Notwithstanding subsection 2, paragraph B, the Adjutant General is authorized to sell the following armories and parcel of land:

- A. The Brunswick Armory; [2007, c. 167, §1 (AMD).]
- B. The Newport Armory; [1995, c. 684, §3 (NEW).]
- C. The Rumford Armory; [1995, c. 684, §3 (NEW).]
- D. [1997, c. 783, §1 (RP).]
- E. The South Portland Armory; [1997, c. 783, §1 (AMD).]
- F. The Millinocket Armory; [2001, c. 353, §2 (AMD).]
- G. A 6 1/2-acre parcel of land located on the northeasterly side of U.S. Route One across from the Belfast Armory and part of the parcel of land described in the Waldo County Registry of Deeds, Book 411, Page 446; [2001, c. 662, §27 (AMD).]
- H. The Caribou Armory, located at 55 Bennett Drive, Caribou, for market value but not including the organizational maintenance shop, known as OMS5, nor the metal storage building; [2003, c. 404, §3 (AMD).]
- I. The Fort Fairfield Armory located at 25 Columbia Street, Fort Fairfield by means of a quitclaim deed, subject to all easements of record, to the inhabitants of the Town of Fort Fairfield for the sum of \$1 as long as the inhabitants of the Town of Fort Fairfield agree to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise from the land or buildings constituting the Fort Fairfield Armory and this transfer is determined to be a transfer for not less than appraised value as specified in subsection 1 in view of the economic conditions of northern Aroostook County, the financial contributions made by the Town of Fort Fairfield to the armory and the environmental conditions existing at the site; [2007, c. 167, §1 (AMD).]
- J. The Saco Armory located at 75 Franklin Street, Saco, Maine, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; [2007, c. 167, §1 (AMD).]
- K. The Bath Armory, or any portion thereof, located on Lincoln Street, Bath, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; [2009, c. 406, §1 (AMD).]
- L. The Portland Armory located on Stevens Avenue, Portland, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; [2007, c. 167, §1 (NEW).]



M. The Westbrook Armory located on Stroudwater Street, Westbrook, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; [2007, c. 167, §1 (NEW).]

N. The Presque Isle Armory located on North Main Street, Presque Isle, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; [2009, c. 406, §2 (AMD).]

O. The Caribou Armory, also known as the "Solman Armory," located on York Street, Caribou, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; [2009, c. 406, §3 (AMD).]

P. The Fort Kent Armory, located on Armory Road, Fort Kent, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; [2015, c. 37, §1 (AMD).]

Q. The Gardiner Armory, located on Brunswick Avenue, Gardiner, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; and [2015, c. 37, §2 (AMD).]

R. The Belfast Armory, located on U.S. Route 1, Belfast, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory. [2015, c. 37, §3 (NEW).]

[ 2009, c. 406, §§1-5 (AMD); 2015, c. 37, §§1-3 (AMD) .]

**4. Easements and rights-of-way.** Notwithstanding subsection 2, the Adjutant General may, with written approval of the Governor, grant easements and rights-of-way on real property held by the Military Bureau.

[ 1995, c. 684, §3 (NEW) .]

**5. Special provisions for the Portland Armory.** Notwithstanding subsection 1, the Adjutant General may execute a like-kind exchange of the Portland Armory, or any portion thereof, located on Stevens Avenue, Portland, for real property of substantially equal value, subject to the provisions of subsection 3, paragraph L.

[ 2009, c. 406, §6 (NEW) .]

**6. Special provisions for the Belfast Armory.** Notwithstanding subsection 1, the Adjutant General may execute a like-kind exchange of a portion of the Belfast Armory property, located on U.S. Route 1, Belfast, for real property of substantially equal value, subject to the provisions of subsection 3, paragraph R.

[ 2015, c. 37, §4 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1995, c. 684, §3 (RPR). 1997, c. 783, §1 (AMD). 1999, c. 185, §6 (AMD). 2001, c. 353, §§2,3 (AMD). 2001, c. 559, §PP1 (AMD). 2001, c. 662, §§27-29 (AMD). 2003, c. 342, §3 (AMD). 2003, c. 404, §§3-5 (AMD). 2003, c. 688, §A42 (AMD). 2007, c. 167, §1 (AMD). 2009, c. 406, §§1-6 (AMD). 2013, c. 469, §§3, 4 (AMD). 2015, c. 37, §§1-4 (AMD).

## §265. STATE EQUIPMENT; OBSOLETE ORDNANCE ISSUED TO MUNICIPALITIES

(REPEALED)

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §30 (RP).

## §266. PROHIBITED ACTS

**1. Destruction of equipment.** The penalties for destruction of equipment are as follows.

A. Any person who knowingly or recklessly destroys, injures or defaces any article of military property belonging to the State or the United States, or uses it for an unauthorized purpose, or has or retains the property in violation of law or rule is guilty of a Class E crime. [1987, c. 208, §1 (NEW).]

B. In case an officer or enlisted man of the state military forces through carelessness or inattention loses, destroys or causes the loss or destruction of government property which has been issued for his use, the Adjutant General shall retain, out of the pay, allowances or money due the officer or enlisted man for any military services an amount equal to the value of the property lost or destroyed. That portion of the money which is for state property shall be turned in to the Treasurer of State and credited to the Military Fund. That portion which is for United States property shall be turned into the United States Treasury and credited to the State on its property returns. [1987, c. 208, §1 (NEW).]

[ 1987, c. 208, §1 (RPR) .]

**2. Equipment not to be sold.** Except as otherwise provided by law, the clothes, arms, military outfits and accoutrements furnished by or through the State to any member of the state military forces shall not be sold, bartered, exchanged, pledged, loaned or given away. Any unauthorized person who has possession of clothes, arms, military outfits or accoutrements furnished as a result of unlawful disposition shall have no right, title or interest in them. Those items may be seized as contraband by a civil officer of the State and shall be delivered to a commanding officer or other officer authorized to receive them, who shall make an immediate report to the Adjutant General. The possession of the clothes, arms, military outfits or accoutrements by any person not a member of the military forces of the State or of the United States shall be prima facie evidence of unauthorized sale, barter, exchange, pledge, loan or gift.

A. Any person who knowingly sells or offers for sale, barter, exchanges, pledges, loans or gives away, secretes or who retains, after demand made by any civil or military officer of the State, any clothes, arms, military outfits or accoutrements furnished by or through the State to a member of the state military forces is guilty of a Class E crime. [1987, c. 208, §2 (NEW).]

B. Whoever knowingly receives by purchase, barter, exchange, pledge, loan or gift any such clothes, arms, military outfits or accoutrements commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. [1987, c. 208, §2 (NEW).]

[ 1987, c. 208, §2 (RPR) .]

**3. Uniform forbidden to unauthorized persons.** It is unlawful for any person not an officer or enlisted man in the federal or state military forces to wear the duly prescribed uniform of any military forces or any distinctive part of the uniform, or a uniform any part of which is similar to a distinctive part of a prescribed uniform. This subsection shall not be construed to prevent authorized persons from wearing the uniforms. The

term "distinctive part of the uniform" in this subsection shall be construed to mean such parts of the uniform as may be designated as "distinctive" by the regulations of the federal military establishment. Violation of this subsection is a Class E crime.

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §12 (AMD). 1987, c. 208, §§1,2 (AMD).

## Subchapter 6: CONSTRUCTION OF MILITARY FACILITIES

### §301. ACQUISITION OF PROPERTY FOR CONSTRUCTION OF MILITARY FACILITIES

#### 1. Duty of municipal officers.

[ 2001, c. 662, §31 (RP) .]

**2. Gifts to the State.** The Governor or the Adjutant General, or both, may accept, in the name of the State, donations of real estate and personal property to be used for military purposes by the state military forces upon such conditions as the donor may prescribe. The Governor may prescribe further rules pertaining to donated property.

[ 2001, c. 662, §32 (AMD) .]

**3. Eminent domain.** The Adjutant General may acquire real property by right of eminent domain in the manner prescribed by law for the taking of land for highway purposes, and both real and personal property by purchase, gift or otherwise, for the purpose of construction or maintenance of armories, airports, shipyards and other military facilities, including the building or improvement and maintenance of railroads or roads necessary for the more efficient use of these facilities for military purposes and the procuring of equipment and supplies for military purposes.

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §§13,14 (AMD). 2001, c. 662, §§31,32 (AMD).

### §302. CONSTRUCTION OF ARMORIES

**1. By the State.** Whenever the Military Fund is sufficient, the Adjutant General may, with the approval of the Governor, erect armories and other necessary buildings.

[ 2001, c. 662, §33 (AMD) .]

#### 2. By municipalities.

[ 2001, c. 662, §34 (RP) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §§33,34 (AMD).

### **§303. PAYMENT OF STATE EXPENSES**

*(REPEALED)*

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §15 (RP).

### **§304. RENT FOR USE OF ARMORIES**

*(REPEALED)*

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §15 (RP).

### **§305. USE OF ARMORIES LIMITED**

*(REPEALED)*

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §15 (RP).

### **§306. TAX EXEMPTION**

All real estate and personal property owned or leased by the State, by any municipality, or by any organization of the state military forces and used for military purposes is exempt from all taxation during the period of that ownership or lease and use. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### **§307. PENALTY FOR VIOLATION OF THIS SECTION**

Any municipal officer who fails to comply with this subchapter is guilty of a Class E crime. Any fine imposed under this section shall be paid into the State Treasury and credited to the General Fund. [1983, c. 594, §16 (RPR).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §16 (RPR).

## Subchapter 7: PENALTIES

### **§341. PROSECUTION OF OFFENSES**

Unless otherwise provided, offenses described in this chapter except where committed by a person subject to the Maine Code of Military Justice or the United States Uniform Code of Military Justice, may be prosecuted by complaint or indictment before a court of competent criminal jurisdiction. All fines and forfeitures collected under this chapter and not otherwise specifically provided for shall be paid into the State Treasury and credited to the General Fund. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §342. PROHIBITED ACTS; PENALTIES

**1. Failure of civil officers to perform duties.** A civil officer named in this chapter, who neglects or refuses to obey the provisions of this chapter, is guilty of a Class E crime.

[ 1983, c. 460, §3 (NEW) . ]

**2. Other military organizations prohibited.** No group of persons, other than federal or state military forces, may join together as a military organization or parade in public with firearms. Associations of historical military reenactors may parade in public with firearms with authorization of the city or town officials in the municipality in which they wish to parade. Students in educational institutions where military science is taught, as a prescribed part of the course of instruction, may drill and parade with firearms in public under the supervision of their military instructors.

Any person violating this subsection is guilty of a Class E crime.

[ 2001, c. 662, §35 (AMD) . ]

**3. Enlistment of minors into the military.** Any person who knowingly enlists, or causes or induces, a person under the age of 18 years to enlist into the state military forces without written consent of his parent or guardian is guilty of a Class E crime.

[ 1983, c. 460, §3 (NEW) . ]

**4. Obstruction of the right-of-way.** The commander of any part of the state military forces parading or performing any military duty in any street or highway may require any or all persons to yield the right-of-way to his troops, provided that the transport of the United States mail, the legitimate functions, progress and operations of police, ambulances, firefighters and other authorized emergency vehicles shall not be interfered with by the troops.

Anyone who hinders, delays or obstructs any portion of the state military forces when parading or performing their military duty, or who attempts to do so, is guilty of a Class E crime.

[ 1983, c. 460, §3 (NEW) . ]

**5. Employment; leave of absence.** It is unlawful for any public or private employer to penalize any member of the National Guard or the Reserves of the United States Armed Forces, with regard to compensation, hiring, tenure, terms, conditions, or privileges of employment or to deny any other incident or advantage of employment due to the employee's membership or participation in the National Guard or the Reserves of the United States Armed Forces.

A. Any person, including an employer described in this subsection, who willfully deprives a member of the National Guard or the Reserves of the United States Armed Forces, of the member's employment, prevents the member's employment, interferes with the member's employment rights as described in this subsection, or otherwise obstructs the member or the member's employer with respect to the member's occupation or business because of the member's membership in the National Guard or the Reserves of the United States Armed Forces, or who dissuades any person from enlisting in, the National Guard or the Reserves of the United States Armed Forces by threat of injury to the member's occupation or business, is guilty of a Class E crime. [ 2001, c. 662, §36 (AMD) . ]

B. All officials and employees of the State who are members of the National Guard or the Reserves of the United States Armed Forces must have a leave of absence not to exceed 17 work days each calendar year from their respective duties, without loss of pay or time, when performing military duty and without loss of time or leave for all other military duty, during which the members are so engaged. [ 2003, c. 583, §7 (AMD) . ]

[ 2003, c. 583, §7 (AMD) . ]

**6. Discrimination against members of the National Guard or Reserves of the United States Armed Forces.** Anyone who discriminates against personnel of the National Guard or the Reserves of the United States Armed Forces must be punished as follows.

A. No association or corporation organized to promote the trade, occupation or business of its members may by a rule or act discriminate against any member of the National Guard or the Reserves of the United States Armed Forces with respect to the member's eligibility for membership in the association or corporation, nor the member's right to retain the member's membership. Whoever aids in enforcing a rule or action against a member of the National Guard or the Reserves of the United States Armed Forces, with intent to discriminate against the member, is guilty of a Class E crime. [ 2001, c. 662, §37 (AMD) . ]

B. Whoever without good cause discriminates against any uniformed member of the National Guard or the Reserves of the United States Armed Forces with respect to the enjoyment of any public place of amusement, the use of any public conveyance, access to public lodging or the receipt of other services generally available to the public is guilty of a Class E crime. [ 2001, c. 662, §37 (AMD) . ]

[ 2001, c. 662, §37 (AMD) . ]

**7. Interference with members in performance of duties.** Whoever intentionally molests, abuses or interferes with any member of the National Guard or the Reserves of the United States Armed Forces in the performance of the member's duty is guilty of a Class E crime.

[ 2001, c. 662, §37 (AMD) . ]

**8. Unauthorized use of military insignia.**

[ 2001, c. 662, §38 (RP) . ]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §17 (AMD). 1987, c. 263, §1 (AMD). 2001, c. 662, §§35-38 (AMD). 2003, c. 583, §7 (AMD).

## §343. PARENTAL RIGHTS AND RESPONSIBILITIES; PARENT ON ACTIVE DUTY

**1. Departure under military orders.** A court may not consider departure from the family residence or absence from the child or children as an adverse factor in determining parental rights and responsibilities with respect to a minor child when the departing parent is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days and whose absence is due to compliance with military orders.

[ 2005, c. 353, §4 (NEW) . ]

**2. Change of residence of child prohibited when parent under military orders.** A court may not order a change of the primary physical residence of a child when one of the child's parents is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days and whose absence from the State is due to compliance with military orders unless the change is in the best interest of the child.

[ 2005, c. 353, §4 (NEW) . ]

**3. Application.** This section applies only if the service of the member referred to in subsection 1 or subsection 2 is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [2005, c. 353, §4 (NEW).]

B. Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress. [2005, c. 353, §4 (NEW).]

[ 2005, c. 353, §4 (NEW) .]

#### SECTION HISTORY

2005, c. 353, §4 (NEW).

## Subchapter 7-A: MAINE NATIONAL GUARD EDUCATION ASSISTANCE PROGRAM

### §351. MAINE NATIONAL GUARD EDUCATION ASSISTANCE PROGRAM

There is established the Maine National Guard Education Assistance Program, referred to in this subchapter as "the program." [2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF).]

#### SECTION HISTORY

2003, c. 488, §4 (NEW). 2003, c. 488, §5 (AFF).

### §352. DEFINITIONS

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF).]

**1. Course.** "Course" means a class taught over a semester, trimester, quarter or term.

[ 2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF) .]

**2. Degree program.** "Degree program" means a course of study designed to culminate in a specific degree, diploma or certificate.

[ 2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF) .]

**3. Member.** "Member" means a member of a federally recognized unit of the Maine National Guard.

[ 2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF) .]

**4. (TEXT EFFECTIVE UNTIL 12/13/18) State postsecondary education institution.** "State postsecondary education institution" means the University of Maine System, the Maine Maritime Academy, the Maine Community College System or any other college or university system established as a public instrumentality of this State.

[ 2015, c. 465, Pt. D, §4 (AMD) .]

**4. (TEXT EFFECTIVE 12/13/18) State postsecondary education institution.** "State postsecondary education institution" means the University of Maine System, the Maine Maritime Academy, the Maine Community College System or any other college or university system established as a public instrumentality of this State, the Maine Criminal Justice Academy, or a private nonprofit postsecondary education institution in this State registered with the Military Bureau as a participating institution in accordance with this subchapter.

[ 2017, c. 419, §1 (AMD) .]

**5. Tuition.** "Tuition" means the total semester, trimester, quarter or term or credit hour cost of instruction to the student as periodically published in the catalog of a state postsecondary education institution, excluding mandatory fees and lab fees and other expenses such as book charges, room and board.

[ 2015, c. 465, Pt. D, §4 (AMD) .]

**6. Tuition benefit.** "Tuition benefit" means tuition provided by the Maine National Guard using either state or federal funds or waivers of tuition from a state postsecondary education institution.

[ 2015, c. 465, Pt. D, §4 (AMD) .]

**7. Unsatisfactory participant.** "Unsatisfactory participant" means a member who has accumulated 9 or more unexcused absences from unit training assemblies or who within a 12-month period, without proper authorization, fails to attend or complete the entire period of annual training.

[ 2015, c. 465, Pt. D, §4 (AMD) .]

#### SECTION HISTORY

2003, c. 488, §4 (NEW). 2003, c. 488, §5 (AFF). 2015, c. 465, Pt. D, §4 (AMD). 2017, c. 419, §1 (AMD).

## §352-A. PARTICIPATING INSTITUTION REGISTRATION

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

*(WHOLE SECTION TEXT EFFECTIVE 12/13/18)*

A member is entitled to a tuition benefit described in this subchapter at a private nonprofit postsecondary education institution in the State if that private nonprofit postsecondary education institution is registered with the Military Bureau as a participating institution in the manner prescribed by the bureau. The bureau may adopt rules to implement the registration requirement described in this section. Rules adopted in accordance with this section are routine technical rules as described under Title 5, chapter 375, subchapter 2. [ 2017, c. 419, §2 (NEW) .]

#### SECTION HISTORY

2017, c. 419, §2 (NEW).

## §353. TUITION GRANT FOR MEMBER

*(REPEALED)*

#### SECTION HISTORY

2003, c. 488, §4 (NEW). 2003, c. 488, §5 (AFF). 2013, c. 469, §5 (AMD). 2015, c. 465, Pt. D, §5 (RP).

## §353-A. MAINE NATIONAL GUARD POSTSECONDARY FUND

The Maine National Guard Postsecondary Fund, referred to in this section as "the fund," is established in the Military Bureau as a nonlapsing account in the General Fund to provide tuition benefits for eligible Maine National Guard members to state postsecondary education institutions. Deposits to the fund may come from sources including but not limited to: the Armory Rental Fund established in section 152; the Capital Repair, Maintenance, Construction and Acquisition Account established in section 154; the reimbursement fund established in section 155; revenue generated from the Maine Military Authority; and rental income fees under Title 5, section 1742, subsection 26, paragraph B. The Adjutant General is responsible for oversight and



allocation of these funds in accordance with this subchapter. The Adjutant General shall provide a report to the Commissioner of Education on the first day of January each calendar year accounting for the use of all funds in the fund. [2015, c. 465, Pt. D, §6 (NEW).]

#### SECTION HISTORY

2015, c. 465, Pt. D, §6 (NEW).

### **§353-B. TUITION BENEFIT FOR MEMBER**

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

*(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/13/18)*

A member who meets the prerequisites of section 354 is entitled to a 100% tuition benefit at a state postsecondary education institution. The benefit applies to tuition for a member enrolled or accepted for admission to a state postsecondary education institution on a full-time or part-time basis. To be eligible for the benefit, a member must be enrolled full-time or part-time at a state postsecondary education institution. The benefit may be used to earn one credential at the following levels: baccalaureate, associate or certificate and licensure. The benefit must be reduced by any other tuition assistance received by a member not related to housing costs or non-tuition expenses. [2015, c. 465, Pt. D, §6 (NEW).]

#### SECTION HISTORY

2015, c. 465, Pt. D, §6 (NEW). 2017, c. 419, §3 (AMD).

### **§353-B. TUITION BENEFIT FOR MEMBER**

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

*(WHOLE SECTION TEXT EFFECTIVE 12/13/18)*

A member who meets the prerequisites of section 354 is entitled to a 100% tuition benefit at a state postsecondary education institution, except that the tuition benefit at a state postsecondary education institution that is a private nonprofit postsecondary education institution may not exceed the in-state tuition at the University of Maine at Orono for the previous academic year. The benefit applies to tuition for a member enrolled or accepted for admission to a state postsecondary education institution on a full-time or part-time basis. To be eligible for the benefit, a member must be enrolled full-time or part-time at a state postsecondary education institution. The benefit may be used to earn one credential at the following levels: baccalaureate, associate or certificate and licensure. The benefit must be reduced by any other tuition assistance received by a member not related to housing costs or non-tuition expenses. [2017, c. 419, §3 (AMD).]

#### SECTION HISTORY

2015, c. 465, Pt. D, §6 (NEW). 2017, c. 419, §3 (AMD).

### **§353-C. WAIVER REQUIRED**

If the cost of providing the tuition benefit under this subchapter exceeds the amount of money available in the Maine National Guard Postsecondary Fund established in section 353-A, the tuition benefit must be provided in the form of a tuition waiver provided by the state postsecondary education institution. [2015, c. 465, Pt. D, §6 (NEW).]

#### SECTION HISTORY

2015, c. 465, Pt. D, §6 (NEW).

### **§354. MINIMUM PREREQUISITES**

To qualify for the tuition benefit, the member must: [2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF).]

**1. Basic training.** Have successfully completed basic training or received a commission;

[ 2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF) .]

**2. Participant.** Be a satisfactory participant in the Maine National Guard who has not previously earned a bachelor's degree or equivalent and be a member in good standing of the Maine National Guard at the beginning of and throughout the entire semester for which the member receives benefits;

[ 2015, c. 465, Pt. D, §7 (AMD) .]

**3. Contractual commitment.** Enter into a written contractual commitment with the Maine National Guard to serve in the Maine National Guard for at least one year beyond the end of the term for which a tuition benefit is granted; and

[ 2015, c. 465, Pt. D, §7 (AMD) .]

**4. Pursued all other benefits available.** Have applied for all available tuition benefits not related to housing costs or non-tuition expenses, including but not limited to:

A. Federally funded military tuition assistance; [2015, c. 465, Pt. D, §8 (NEW).]

B. Employer tuition reimbursements or assistance; and [2015, c. 465, Pt. D, §8 (NEW).]

C. Federal grants, such as a Federal Pell Grant. [2015, c. 465, Pt. D, §8 (NEW).]

[ 2015, c. 465, Pt. D, §8 (NEW) .]

#### SECTION HISTORY

2003, c. 488, §4 (NEW). 2003, c. 488, §5 (AFF). 2015, c. 465, Pt. D, §§7, 8 (AMD).

## §355. CESSATION OF TUITION BENEFIT

The tuition benefit granted under this subchapter for a member ceases upon: [2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF).]

**1. Credit hours.** Accumulation of 130 credit hours or the equivalent of the tuition benefit as provided in this subchapter when the benefit is used in part or in whole;

[ 2015, c. 465, Pt. D, §9 (AMD) .]

**2. Unsatisfactory participation.** Unsatisfactory participation in the Maine National Guard as certified to the state postsecondary education institution by the Adjutant General;

[ 2015, c. 465, Pt. D, §9 (AMD) .]

**3. Good academic standing.** Failure by the member to maintain good academic standing and a cumulative grade point average of at least 2.0 on a 4.0 scale at the state postsecondary education institution; or

[ 2015, c. 465, Pt. D, §9 (AMD) .]

**4. Restitution plan.** Imposition of a plan for the member to pay restitution of tuition benefits in accordance with this subchapter.

[ 2015, c. 465, Pt. D, §9 (NEW) .]

#### SECTION HISTORY

2003, c. 488, §4 (NEW). 2003, c. 488, §5 (AFF). 2015, c. 465, Pt. D, §9 (AMD).

### §356. RESTITUTION

Repayment of the tuition benefit is required pursuant to this section. [2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF).]

**1. Failure to complete.** A member shall pay the full amount of a tuition benefit for each course during the preceding semester, trimester, quarter or term that:

A. The member fails to complete; or [2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF) .]

B. The member completes but for which the member earns a grade lower than 2.0 on a 4.0 scale. [2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF).]

[ 2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF) .]

**2. Repay tuition.** If the member becomes an unsatisfactory participant or does not remain in good academic standing with the state postsecondary education institution, then the member shall repay the full amount of a tuition benefit for all courses taken during the preceding semester, trimester, quarter or term to the Maine National Guard.

[ 2015, c. 465, Pt. D, §10 (AMD) .]

**3. Restitution.** If the member does not fulfill the member's contractual commitment to the Maine National Guard under section 354, subsection 3, then the Adjutant General shall notify the member in writing that the member is liable for restitution and the member shall repay the full amount of the tuition benefit for the last school year.

[ 2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF) .]

**4. Rules.** The Adjutant General shall adopt rules to implement the provisions of this section, which are routine technical rules under Title 5, chapter 375, subchapter 2-A.

[ 2015, c. 465, Pt. D, §11 (NEW) .]

A member may appeal the requirement to make restitution pursuant to this section if the member files a written notice of intent to appeal with the Adjutant General within 30 days of notice that the member is liable for restitution. During the pendency of the appeal, the requirement of restitution is postponed. If the Adjutant General determines that the member met the requirements for restitution as described in subsection 1, 2 or 3 and that there were not sufficient extenuating circumstances to excuse the failure of the member to complete satisfactorily the course or participation in the Maine National Guard, the Adjutant General shall inform the member of this determination and the member shall make restitution for those courses for which the Adjutant General determines the member is liable. The decision of the Adjutant General is final and may not be appealed. [2003, c. 488, §4 (NEW); 2003, c. 488, §5 (AFF).]

#### SECTION HISTORY

2003, c. 488, §4 (NEW). 2003, c. 488, §5 (AFF). 2015, c. 465, Pt. D, §§10, 11 (AMD).

### **§357. IN-STATE TUITION RATES**

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

*(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/13/18)*

A member who is approved to receive tuition benefits under this subchapter qualifies for in-state tuition rates. [2015, c. 465, Pt. D, §12 (RPR).]

#### SECTION HISTORY

2003, c. 488, §4 (NEW). 2003, c. 488, §5 (AFF). 2015, c. 465, Pt. D, §12 (RPR). 2017, c. 419, §4 (AMD).

### **§357. IN-STATE TUITION RATES**

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

*(WHOLE SECTION TEXT EFFECTIVE 12/13/18)*

Unless otherwise provided under this subchapter, a member who is approved to receive tuition benefits under this subchapter qualifies for in-state tuition rates. [2017, c. 419, §4 (AMD).]

#### SECTION HISTORY

2003, c. 488, §4 (NEW). 2003, c. 488, §5 (AFF). 2015, c. 465, Pt. D, §12 (RPR). 2017, c. 419, §4 (AMD).

### **§358. APPLICATION**

*(REPEALED)*

#### SECTION HISTORY

2003, c. 488, §4 (NEW). 2003, c. 488, §5 (AFF). 2015, c. 465, Pt. D, §13 (RP).

### **§359. MOBILIZED OR DEPLOYED MEMBERS**

Any member who is a student receiving a tuition benefit under this subchapter who is mobilized or deployed is entitled to an extension of the time the tuition benefit may be claimed equal to the amount of time served on active duty. [2015, c. 465, Pt. D, §14 (NEW).]

#### SECTION HISTORY

2015, c. 465, Pt. D, §14 (NEW).

### **§360. POLICIES AND IMPLEMENTATION**

The Adjutant General is responsible for overall policies, guidance, administration and proper use of the program provided for in this subchapter. [2015, c. 465, Pt. D, §14 (NEW).]

#### SECTION HISTORY

2015, c. 465, Pt. D, §14 (NEW).

## Subchapter 8: MISCELLANEOUS PROVISIONS

## §381. FRESH PURSUIT

Except as provided in this section, no component of the state military forces, except the National Guard when called to federal service, may leave the State and no military organization of another state, unless acting under authority of the United States, may enter the State, except by permission of the Governor or the Adjutant General. [2001, c. 662, §39 (AMD).]

**1. By state military forces.** A component of the state military forces may, upon the order of the officer in immediate command, continue in fresh pursuit of insurrectionists, saboteurs or enemy forces into another state until those persons are apprehended or until the military or police forces of the other state or forces of the United States have had a reasonable opportunity to apprehend those persons, provided that the other state has given authority by law for that pursuit by forces of this State. Any person who is apprehended in another state by any element of the state military forces shall be surrendered without unnecessary delay to the military or police forces of that state or of the United States. That surrender shall not constitute a waiver by this State of its right to extradite or prosecute the person for a crime committed in this State.

[ 1983, c. 460, §3 (NEW) .]

**2. By forces of other states.** A component of the military forces of another state, which is in fresh pursuit of insurrectionists, saboteurs or enemy forces, may continue the pursuit into this State until the military or police forces of this State or the forces of the United States have had reasonable opportunity to apprehend these persons. The state military forces of the other state are authorized to detain persons apprehended while in fresh pursuit in this State. Any person who is detained in this State by military forces of the other state shall be surrendered without unnecessary delay to the military or police forces of this State to be dealt with according to law. This subsection shall not be construed to make unlawful any arrest in this State which would otherwise be lawful.

[ 1983, c. 460, §3 (NEW) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §39 (AMD).

## §382. REGISTRATION OF ALIENS DURING TIME OF WAR

Whenever a state of war exists or is imminent between the United States and a foreign country, the Governor may by proclamation direct every citizen or subject of that foreign country within this State to personally appear within 24 hours after the proclamation or within 24 hours after his arrival in this State, whichever is later, before the public authorities named by the Governor in the proclamation. At that time the citizen or subject of the foreign country shall register his name, residence, business, length of stay and other information which the Governor may prescribe in the proclamation. [1983, c. 460, §3 (NEW) .]

The person in control of each hotel, inn, boardinghouse, rooming house and private residence within the State shall within 24 hours after the proclamation notify the public authorities of the presence in their establishment of every citizen or subject of that foreign country, and shall each day notify the public authorities of the arrival and departure of those persons. Failure to comply with the requirements of the Governor's proclamation or to do or perform any of the acts provided in this section is a Class E crime. [1983, c. 460, §3 (NEW) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §383. AWARDS, MEDALS AND PRIZES

The Governor may prescribe the award of medals, prizes, citations and other suitable means of public recognition for distinguished service, longevity, marksmanship, acts of valor, dependability, meritorious achievement and other qualities. The awards may be made to members of the state military forces or to

individuals not members who have rendered appropriate service to the military establishment. The Governor shall promulgate rules to carry out this section. Expenses for procurement of these awards shall be provided from the Military Fund. [1983, c. 594, §18 (RPR).]

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §18 (RPR).

**§384. FLAG TO BE CARRIED**

The flag of the State to be carried by the National Guard shall be the same as the flag described in Title 1, section 206, with addition of a scroll in red below the coat of arms of the State bearing the inscription, "Maine National Guard." [1983, c. 460, §3 (NEW).]

## SECTION HISTORY

1983, c. 460, §3 (NEW).

**§385. NATIONAL GUARD GROUP LIFE INSURANCE**

The Adjutant General may enter into insurance agreements with insurance companies for group life insurance on behalf of each participating national guardsman called to state active duty and to pay from departmental funds the cost of each individual's premium for that insurance. [1983, c. 460, §3 (NEW).]

Any insurance agreement entered into under this authority shall be reviewed and approved by the Superintendent of Insurance before it becomes effective. All insurance policies shall be issued by an insurance company licensed by the Bureau of Insurance to do business in the State. [1983, c. 460, §3 (NEW).]

## SECTION HISTORY

1983, c. 460, §3 (NEW).

**§386. NATIONAL GUARD ASSOCIATION**

**1. Commissioned officers.** The commissioned officers of the National Guard may organize themselves into an association. The name of the association shall be the "National Guard Association of the State of Maine." The association may adopt and amend a constitution and bylaws, not repugnant to law, orders or regulations. The association may take and hold real and personal property necessary for the purposes of the association.

[ 1983, c. 460, §3 (NEW) .]

**2. Enlisted personnel.** The enlisted personnel of the National Guard may organize themselves into an association. The name of the association shall be the "Enlisted National Guard Association of the State of Maine." The association may adopt and amend a constitution and bylaws, not repugnant to law, orders or regulations. The association may take and hold real and personal property necessary for the purposes of the association.

[ 1983, c. 460, §3 (NEW) .]

## SECTION HISTORY

1983, c. 460, §3 (NEW).

## §387. STAY OF FORCIBLE ENTRY AND DETAINER DURING MILITARY SERVICE

**1. General rule.** Whenever any member of the National Guard or the Reserves of the United States Armed Forces is ordered to military duty in response to federal or state orders, a forcible entry and detainer action may not be made of the premises occupied chiefly for dwelling purposes by the military member or any military family member or other dependents, except upon leave of court granted upon application for such an action.

[ 2001, c. 662, §40 (NEW) . ]

**2. Stay of proceedings.** In an action brought pursuant to subsection 1, the court may on its own motion or upon the motion of the military member or military family member, stay the proceedings if in the opinion of the court the ability of the military member or military family member to pay the rent is materially affected by reason of the military service. The court may make such other order as may be just under the circumstances, including an order postponing full payment of the rent.

[ 2001, c. 662, §40 (NEW) . ]

**3. Impact on landlords.** When a stay or other order is made pursuant to this section by the court, the owner of the premises is entitled upon application to such relief as the court determines just and equitable under the circumstances, including an order of the military member or military family member to pay the arrearage in rent upon the release from military service to the extent and for such a period as may appear to the court just.

[ 2001, c. 662, §40 (NEW) . ]

### SECTION HISTORY

2001, c. 662, §40 (NEW).

## §388. EDUCATIONAL LEAVE OF ABSENCE

Whenever any member of the National Guard or the Reserves of the United States Armed Forces is ordered to military duty in response to federal or state orders, the educational institution in which the member is enrolled shall grant the member a military leave of absence from the educational institution. Upon release from military duty, a person on military leave of absence from an educational institution is entitled to be restored to the educational status that person had attained prior to being ordered to military duty without loss of academic credits earned, scholarships or grants awarded to tuition, room and board and other fees paid prior to the commencement of military duty. The educational institution shall proportionately refund tuition, room and board and other fees paid or credit them to the next semester or term after the termination of the educational military leave of absence, at the option of the member. [2001, c. 662, §40 (NEW) . ]

### SECTION HISTORY

2001, c. 662, §40 (NEW) .

## §389. STAY OF PROCEEDING FOR MILITARY MEMBERS

*(REPEALED)*

### SECTION HISTORY

2001, c. 662, §40 (NEW). 2003, c. 404, §6 (RPR). 2005, c. 353, §5 (RP).

## §389-A. SERVICE MEMBERS' CIVIL RELIEF

**1. Short title.** This section may be known and cited as "the Maine Servicemembers' Civil Relief Act."

[ 2005, c. 353, §6 (NEW) . ]

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

A. "Court" means any administrative agency, civil court or venue of a proceeding involving a case management officer. [ 2005, c. 353, §6 (NEW) . ]

B. "Service member" means a member of the uniformed services as that term is defined in 10 United States Code, Section 101(a)(5) or a member of the state military forces as that term is described in section 102, on active state service as that term is defined in section 101-A. [ 2005, c. 353, §6 (NEW) . ]

[ 2005, c. 353, §6 (NEW) . ]

**3. Stay of proceeding.** Any action or proceeding in any court in which a service member is involved, either as plaintiff, defendant or attorney, if the plaintiff, defendant or attorney is a member of the National Guard or the Reserves of the United States Armed Forces, during the period of any military service or within 60 days after any military service, at the discretion of the court, or by the member's own motion or motion of the court, may be stayed at any stage of the proceeding unless, in the opinion of the court, the ability of the plaintiff to prosecute the action, the defendant to conduct the defendant's defense or the attorney to represent either party is not materially affected by reason of the member's military service, except that an action or proceeding involving a child may not be stayed unless the stay is in the best interest of the child.

[ 2005, c. 353, §6 (NEW) . ]

**4. Appearance.** An application for a stay of a court or administrative proceeding pursuant to the Servicemembers' Civil Relief Act of 2003, 50 United States Code App. Sections 501 to 596, or this section does not constitute an appearance for any purpose.

[ 2005, c. 353, §6 (NEW) . ]

**5. Electronic means; testimony and evidence.** Upon motion of a service member who is a party in a civil case, the court shall allow the service member to present testimony and evidence by electronic means when the military duties of the service member have a material effect on the service member's ability to appear in person at a regularly scheduled hearing, unless good cause is shown. For purposes of this subsection, "electronic means" includes, but is not limited to, telephone, video teleconference and the Internet.

[ 2005, c. 353, §6 (NEW) . ]

**6. Expedited hearing.** Upon motion of a service member who is a party in a civil case, the court shall hold an expedited hearing when the military duties of the service member have a material effect on the service member's ability to appear in person at a regularly scheduled hearing, unless good cause is shown.

[ 2005, c. 353, §6 (NEW) . ]

**7. Transfer of parent-child contact rights.** Upon motion of a service member, or upon the court's own motion, in a case involving parent-child contact, the court shall allow the service member to temporarily transfer the service member's contact rights to a relative, by blood or marriage, who has a significant



connection with the child or children when the military duties of the service member have a material effect on the ability of the service member to exercise those rights, unless the transfer is not in the best interest of the child.

[ 2005, c. 353, §6 (NEW) .]

#### SECTION HISTORY

2005, c. 353, §6 (NEW).

### §390. DEFERRED MOTOR VEHICLE INSURANCE COVERAGE

**1. Applicability.** This section applies whenever any member of the National Guard or the Reserves of the United States Armed Forces is ordered to military duty in response to federal or state orders for 30 or more consecutive days.

[ 2001, c. 662, §40 (NEW) .]

**2. Deferral of coverage.** A member of the military forces as described in subsection 1 may defer without cost or penalty motor vehicle insurance coverage during the period of military duty on one or more vehicles owned by the member, either individually or jointly with another person, as long as the member certifies to the insurer that the vehicle will not be operated during the member's absence on military duty and, if a motor vehicle serves as collateral for a loan, the member must continue to insure it against the risks of property damage and theft as required by the lender.

[ 2001, c. 662, §40 (NEW) .]

**3. Refund or crediting of prepaid premiums.** The insurer shall, at the election of the member, refund premiums paid for coverage during the period of deferral or credit those premiums to coverage in effect after the end of the deferral period.

[ 2001, c. 662, §40 (NEW) .]

**4. Reinstatement of deferred coverage.** Upon the member's release or discharge from military duty, the insurer shall, upon notice, reinstate the member's coverage at the rates in effect on the date of reinstatement.

[ 2001, c. 662, §40 (NEW) .]

#### SECTION HISTORY

2001, c. 662, §40 (NEW).

### §390-A. WAIVER OF CONTINUING EDUCATION REQUIREMENTS; EXTENSION OF LICENSE, CERTIFICATE OR REGISTRATION

**1. Definitions.** As used in this section, unless the context otherwise indicates, "active duty for a period of more than 30 days" has the same meaning as in 10 United States Code, Section 101(d)(2).

[ 2005, c. 111, §3 (NEW) .]

**2. Waiver of continuing education requirements.** Notwithstanding any other provision of law, except as provided in Title 12, section 6311 a person who is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days and who was licensed, registered or certified to engage in a profession or occupation prior to entering into active duty for a

period of more than 30 days may not be required to complete the continuing education requirements for that profession or occupation for any licensing, registration or certification period during that period of active duty and for 6 months after that person is released from active duty.

[ 2005, c. 111, §3 (NEW) .]

**3. Automatic extension of license, certificate or registration.** Notwithstanding any other provision of law, except as provided in Title 12, section 6311 a person who is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days and who was licensed, certified or registered to engage in a profession or occupation prior to being called to active duty for a period of more than 30 days and whose license, certificate or registration expires during that period of active duty must have that license, certificate or registration automatically extended for the period of active duty and for 6 months after that person has been released from active duty.

[ 2005, c. 111, §3 (NEW) .]

**4. Limited application.** This section applies only if the member's service is in support of:

A. An operational mission for which members of the Reserves of the United States Armed Forces have been ordered to active duty without their consent; or [2005, c. 111, §3 (NEW) .]

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress. [2005, c. 111, §3 (NEW) .]

[ 2005, c. 111, §3 (NEW) .]

#### SECTION HISTORY

2005, c. 111, §3 (NEW) .

## §390-B. REIMBURSEMENT FOR PURCHASE OF SUPPLEMENTAL LIFE INSURANCE

A member of the National Guard or the Reserves of the United States Armed Forces assigned to a unit located in the State who serves in the theater of operations for Operation Enduring Freedom or Operation Iraqi Freedom during any month in the 2006 calendar year is eligible to receive reimbursement for the cost of the monthly premium for supplemental life insurance offered by the Federal Government from the Commissioner of Defense, Veterans and Emergency Management in an amount up to \$16.25 per month for each month in 2006 that member serves in either theater of operations and for which that member purchases supplemental insurance. [2005, c. 519, Pt. W, §2 (NEW) .]

#### SECTION HISTORY

2005, c. 519, §W2 (NEW) .

## §390-C. ADMINISTRATION OF OATHS AND NOTARIAL ACTS

**1. Power to administer oaths.** A commissioned or warrant officer of the state military forces and other personnel of the state military forces authorized to administer oaths under the laws of this State may administer oaths for the purpose of the administration of military justice and for other purposes of military administration, including administering enlistment oaths to persons enlisting or reenlisting in the National Guard. A commissioned or warrant officer of the United States Armed Forces may administer enlistment oaths to persons enlisting or reenlisting in the National Guard.

[ 2013, c. 178, §1 (NEW) .]

**2. Powers of notary public.** A judge advocate or paralegal serving in the state military forces has, by virtue of the judge advocate's or paralegal's office and service, the powers of a notary public in the performance of all notarial acts to be executed for any member of the state military forces or United States Armed Forces or spouse of a member of the state military forces or United States Armed Forces. A fee may not be paid to or received by any person for the performance of a notarial act authorized in this subsection. The signature of any such person acting as a notary, together with that person's official title, is prima facie evidence that the signature is genuine, that the person holds the designated title and that the person is authorized to perform a notarial act. A notarization or acknowledgment accomplished under the authority of this subsection must generally follow the form below but is not required to be under official seal:

I, (name of notary public), certify that the foregoing instrument was subscribed and (sworn/affirmed) before me this (day of the month) day of (month), (year) by (name of person making statement), (state military forces or United States Armed Forces service number/social security number), and who is known to me to be (a member of the state military forces or United States Armed Forces/the spouse of a member of the state military forces or United States Armed Forces).

[ 2013, c. 178, §1 (NEW) . ]

SECTION HISTORY

2013, c. 178, §1 (NEW).

## Subchapter 9: MAINE MILITARY AUTHORITY

### §391. MAINE MILITARY AUTHORITY ESTABLISHED

The Maine Military Authority is established within the Executive Department. [ 2003, c. 646, §6 (RPR) . ]

SECTION HISTORY

2001, c. 374, §8 (NEW). 2003, c. 342, §4 (AMD). 2003, c. 646, §6 (RPR).

### §392. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [ 2001, c. 374, §8 (NEW) . ]

**1. Authority.** "Authority" means the Maine Military Authority.

[ 2001, c. 374, §8 (NEW) . ]

**2. Operating revenues.**

[ 2003, c. 646, §7 (RP) . ]

SECTION HISTORY

2001, c. 374, §8 (NEW). 2003, c. 646, §7 (AMD).

### §393. MAINE MILITARY AUTHORITY OPERATION

The Adjutant General operates the authority under the direction of the Governor and may: [ 2001, c. 374, §8 (NEW) . ]

**1. Execute agreements.** Execute cooperative agreements between the Maine National Guard and the Federal Government or its instrumentalities or agencies;

[ 2001, c. 374, §8 (NEW) . ]

**2. Contract with various entities.** Contract with the Federal Government or its instrumentalities or agencies, the State or its agencies, instrumentalities or municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals;

[ 2001, c. 374, §8 (NEW) . ]

**3. Accept financial assistance.** Accept, through the normal budgetary process, financial assistance and in-kind assistance, advances, loans, grants, gifts, contributions and other forms of financial assistance from the Federal Government and the State Government or its agencies, from municipalities or other public bodies or from other sources, public or private;

[ 2003, c. 646, §8 (AMD) . ]

**4. Provide money for upkeep.** Provide from operating revenues money for the maintenance, construction or reconstruction of capital repair and replacement items as necessary and approved by the Legislature;

[ 2003, c. 646, §8 (AMD) . ]

**5. Acquire property.** Acquire for use by the authority real or personal property or any interest in real or personal property, including rights or easements, on either a temporary or permanent basis, by gift, purchase, transfer, lease or otherwise, subject to the approval of the Legislature;

[ 2003, c. 646, §8 (AMD) . ]

**6. Dispose of property.** In accordance with applicable state law, hold, sell, lease, rent or otherwise dispose of any real or personal property, or any interest in real or personal property, and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, and these proceeds become and remain operating revenues except that the Adjutant General may not sell any interest in real property without following the provisions of section 264;

[ 2003, c. 646, §8 (AMD) . ]

**7. Procure insurance.** Procure insurance through the Risk Management Division against any loss in connection with property of the authority and other assets in amounts and from insurers that the Director of Risk Management determines necessary or desirable to protect the State from risks or losses; and

[ 2003, c. 646, §8 (AMD) . ]

**8. Take all other lawful action.** Take all other lawful action necessary and incidental to the powers in this subchapter.

[ 2001, c. 374, §8 (NEW) . ]

#### SECTION HISTORY

2001, c. 374, §8 (NEW). 2003, c. 646, §8 (AMD).

## §394. EMPLOYEES

**1. Employees.** The Adjutant General may employ technical experts and other agents and employees, permanent or temporary, for the authority. Such employees are subject to the Civil Service Law.

[ 2003, c. 646, §9 (AMD) .]

**2. Service at pleasure of Adjutant General.** The executive director and general manager serve at the pleasure of the Adjutant General.

[ 2001, c. 374, §8 (NEW) .]

**3. Legal services.** The Office of the Attorney General shall provide legal services for the authority, or, with the permission of the Adjutant General, retain outside counsel.

[ 2003, c. 646, §9 (AMD) .]

**4. Establish positions.** By financial order, the Adjutant General may establish positions necessary to support the operations of the Maine Readiness Sustainment Center in Limestone or to maintain, repair, store and manufacture equipment under section 157. In order for a position that is established by financial order to become permanent, it must be presented to the next session of the Legislature through the normal budgetary process. As a result of their limited nature, positions funded by the operating revenues of the Maine Military Authority Enterprise Fund are not included as a part of the overall position count of state government operations.

[ 2005, c. 12, Pt. MMM, §2 (AMD) .]

**5. Employee administration.** Notwithstanding the provisions of Title 26, section 979-A, subsection 5, the Governor shall direct the authority to develop and execute employee relations policies, conduct negotiations with certified and recognized bargaining agents for its employees and administer and interpret the collective bargaining agreements applying to the employees of the authority consistent with the overall objectives of the Governor. The Department of Administrative and Financial Services, Bureau of Human Resources shall assist and advise the Governor and the authority, in order to ensure compliance with state and federal labor and employment laws consistent with the overall objectives of the Governor. Employees of the authority are essential employees for the purpose of shutdown or furlough days imposed on employees of the State.

[ 2007, c. 240, Pt. HH, §16 (AMD) .]

### SECTION HISTORY

2001, c. 374, §8 (NEW). 2003, c. 646, §9 (AMD). 2005, c. 12, §MMM2 (AMD). 2007, c. 240, Pt. HH, §16 (AMD).

## §395. BOOKS AND RECORDS

The Adjutant General shall ensure the accurate and timely maintenance of books, records, accounts and other evidences of the financial transactions of all the authority's activities in accordance with accounting standards established by a governmental accounting standards board and the State Controller. Books and records must be open to inspection and audit by the Maine National Guard, the State Auditor and the Federal Government audit in conjunction with federal contracts, agreements, grants or cooperative agreements but are otherwise confidential and not subject to Title 1, chapter 13, subchapter 1. The State Auditor shall periodically conduct an audit of the financial records of the authority and report the results of the audit to the Adjutant General, the State Controller, the Governor and the Legislature. The Adjutant General may maintain

the required books, records, accounts and other evidences of the financial transactions of all of the authority's activities or enter into service agreements or contracts with departments and agencies of State Government for that purpose. [2003, c. 646, §10 (AMD).]

## SECTION HISTORY

2001, c. 374, §8 (NEW). 2003, c. 646, §10 (AMD).

**§396. BUDGET**

The Adjutant General shall establish a budget for the authority and shall present that budget to the Governor and the Legislature. [2003, c. 646, §11 (AMD).]

## SECTION HISTORY

2001, c. 374, §8 (NEW). 2003, c. 646, §11 (AMD).

**§397. REPORT**

The Adjutant General shall report by February 15th of the first regular session of each Legislature to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and defense, veterans and emergency management matters. The report must include information about the operation of the authority, its budget and the distribution of profits generated by the authority. [2001, c. 374, §8 (NEW).]

## SECTION HISTORY

2001, c. 374, §8 (NEW).

**§398. PROPERTY EXEMPT FROM EXECUTION**

*(REPEALED)*

## SECTION HISTORY

2001, c. 374, §8 (NEW). 2003, c. 646, §12 (RP).

**§399. REVENUE**

Revenue generated by the authority must first be used to support the operation of the authority, including segregation of money for future capital repairs. At the close of the fiscal year, unreserved retained earnings as identified by the State Controller may be transferred at any time prior to the closing of the books to: [2013, c. 251, §4 (NEW).]

**1. Capital repairs; tuition assistance.** An account established within the Military Bureau to be used for capital repairs, maintenance, construction and acquisition of state military facilities and Maine National Guard tuition assistance;

[ 2013, c. 469, §6 (AMD) .]

**2. Official representation funds.** An account established within the Military Bureau to be used for official representation funds, in an amount not to exceed \$10,000 annually;

[ 2013, c. 251, §4 (NEW) .]

**3. Unfunded priorities.** An account established within the Military Bureau to be used for the Adjutant General's unfunded priorities, in an amount not to exceed \$10,000 annually; and

[ 2013, c. 251, §4 (NEW) .]

**4. Maine National Guard Foundation Fund.** An account established within the Military Bureau to be used for the Maine National Guard Foundation Fund or its successor fund, in an amount not to exceed \$10,000 annually.

[ 2013, c. 251, §4 (NEW) .]

SECTION HISTORY

2001, c. 374, §8 (NEW). 2003, c. 646, §13 (AMD). 2013, c. 251, §4 (RPR). 2013, c. 469, §6 (AMD).

## Chapter 5: MAINE CODE OF MILITARY JUSTICE

### §401. TITLE

This chapter may be cited as the "Maine Code of Military Justice." [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §402. DEFINITIONS

As used in this Code, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 460, §3 (NEW).]

**1. Accuser.** "Accuser" means a person who:

A. Signs and swears to charges; [1983, c. 460, §3 (NEW).]

B. Directs that charges be signed and sworn in the name of another; or [1983, c. 460, §3 (NEW).]

C. Has an interest, other than an official interest, in the prosecution of the accused. [1983, c. 460, §3 (NEW).]

[ 1983, c. 460, §3 (NEW) .]

**2. Active service.** Active service is defined in section 101-A, subsection 1.

[ 1987, c. 230, §2 (RPR) .]

**3. Code.** "Code" means this chapter.

[ 1983, c. 460, §3 (NEW) .]

**4. Commanding officer.** "Commanding officer" means any officer vested with the authority for the direction, coordination and control of a military unit.

[ 2001, c. 662, §41 (AMD) .]

**5. Enlisted person.** "Enlisted person" means any person who is serving in an enlisted grade in any military force.

[ 1983, c. 460, §3 (NEW) .]

**6. Military forces.** Military forces is defined in section 101-A, subsection 2.

[ 1987, c. 230, §2 (RPR) .]

**7. Military judge.** "Military judge" means an official of a court-martial detailed in accordance with section 221.

[ 1983, c. 460, §3 (NEW) .]



**8. Military unit.** "Military unit" means any military element whose structure is prescribed by a competent authority, such as a table of organization and equipment.

[ 1983, c. 460, §3 (NEW) .]

**9. Officer.** "Officer" means a commissioned or warrant officer.

[ 1983, c. 460, §3 (NEW) .]

**10. Superior officer.** "Superior officer" means an officer superior in rank or command.

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 230, §2 (AMD). 2001, c. 662, §41 (AMD).

### §403. PERSONS SUBJECT TO THE CODE

**1. Active member.** All members of the state military forces are subject to the Maine Code of Military Justice at all times except when in federal service pursuant to United States Code, Title 10.

A. This code applies to members of the state military forces serving out-of-state and while going to and returning from service out-of-state to the same extent as a person serving within the State. [1987, c. 263, §2 (NEW).]

B. Offenses committed outside the State may be tried and punished either inside or outside the State subject to section 418. [1987, c. 263, §2 (NEW).]

[ 2001, c. 662, §42 (AMD) .]

**2. Fraudulent discharge.** All persons discharged from the military forces subsequently charged with having fraudulently obtained the discharge are subject to trial by court-martial on that charge and after apprehension are subject to this Code while in the custody of the military forces for the trial. Upon conviction on that charge, they are subject to trial by court-martial for all offenses under this Code committed prior to the fraudulent discharge.

[ 2009, c. 2, §115 (COR) .]

**3. Deserters.** Persons who have deserted from the military forces shall not be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any subsequent period of service.

[ 1983, c. 460, §3 (NEW) .]

**4. Activation.** The Governor may order to active state service any member or former member of the state military forces for purposes of asserting jurisdiction in connection with prosecuting an offense alleged to have occurred while the person was in active state service.

[ 1983, c. 594, §19 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §19 (NEW). 1987, c. 263, §2 (AMD). 2001, c. 662, §42 (AMD). RR 2009, c. 2, §115 (COR).

## §404. PLACES WHERE APPLICABLE

This Code applies in all places where personnel of military forces are present. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §405. JUDGE ADVOCATES

The Adjutant General shall appoint judge advocates for the Army National Guard and judge advocates for the Air National Guard. The Adjutant General shall appoint as state judge advocate one of the judge advocates from the National Guard. [2001, c. 662, §43 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §20 (AMD). 2001, c. 662, §43 (AMD).

## §406. APPREHENSION

**1. Meaning.** Apprehension is the taking into custody of a person.

[ 1983, c. 460, §3 (NEW) .]

**2. By military authority.** Any person authorized by law or regulations governing the military forces to apprehend persons subject to this Code or to trial thereunder may do so upon reasonable belief that an offense under this Code has been committed and that the persons apprehended committed it.

[ 1983, c. 460, §3 (NEW) .]

**3. By civil authority.** Any civil officer having authority to apprehend offenders under the laws of this State may apprehend a deserter or a member of the military forces absent without leave and deliver him into the custody of the appropriate component of the military force. Without limiting the authority granted in this subsection, upon written certification from the Adjutant General that a member is absent without leave from military duty, the civil officer, upon the Adjutant General's request, shall apprehend the member and deliver him to duty in accordance with the request.

[ 1983, c. 594, §21 (AMD) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §21 (AMD).

## §407. ARREST OR CONFINEMENT

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

A. "Arrest" is the restraint of a person by an order directing him to remain within certain specified limits and which is not imposed as a punishment for an offense. [1983, c. 460, §3 (NEW).]

B. "Confinement" is the physical restraint of a person. [1983, c. 460, §3 (NEW).]

[ 1983, c. 460, §3 (NEW) .]

**2. Order.** A person subject to this Code who is charged with an offense under this Code may be ordered into arrest or confinement, as circumstances require.

A. An enlisted person may be ordered into arrest or confinement by any officer by an order, oral or written, delivered in person or through other persons subject to this Code. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted persons of the commanding officer's command or subject to the commanding officer's authority into arrest or confinement. [2001, c. 662, §44 (AMD).]

B. An officer or warrant officer may be ordered into arrest or confinement only by a commanding officer to whose authority the officer or warrant officer is subject. The order may be oral or written and delivered in person or by another officer. The authority to order officers or warrant officers into arrest or confinement may not be delegated. [2001, c. 662, §44 (AMD).]

[2001, c. 662, §44 (AMD).]

**3. Not a limitation.** Nothing in this section may be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until the proper authority may be notified.

[1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §44 (AMD).

### §408. DESIGNATED JAILS

Confinement other than in a guard house, whether prior to, during or after trial by a military court, shall be executed in correctional centers designated by the Governor or by the Adjutant General for that purpose. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §409. PROBABLE CAUSE

A person shall not be ordered into arrest or confinement except for probable cause. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §410. INFORMATION ON CHARGES; SPEEDY TRIAL

When any person subject to this Code is arrested or confined prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §411. QUELLING OF DISORDERS

All officers and noncommissioned officers may quell all quarrels, frays and disorders among persons subject to this Code and apprehend persons subject to this Code who take part in those disorders. [2001, c. 662, §45 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §45 (AMD).

## §412. RECEIVING PRISONERS

When an officer of the military forces delivers a prisoner and furnishes a statement of the offense charged against that prisoner to a provost marshal, commander of the guard, warden, keeper or officer of a city or county jail or other correctional center designated under section 408, that official shall commit the prisoner to his charge. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §413. REPORT OF PERSONS HELD

Every provost marshal, commander of the guard, warden, keeper or officer of a city or county jail or other correctional center designated under section 408 to whose charge a prisoner is committed shall, within 24 hours after such commitment or as soon as he is relieved from guard, report to his commanding officer the name of the prisoner, the offense charged against him and the name of the person who ordered or authorized commitment. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §414. APPLICATION OF THE UNITED STATES MANUAL FOR COURTS-MARTIAL

Insofar as it is not inconsistent with this Code, the United States Manual for Courts-Martial, as established by executive order of the President of the United States and as revised from time to time, applies to proceedings pursuant to this chapter. [2001, c. 662, §46 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §46 (AMD).

## §415. NONJUDICIAL PUNISHMENT

*(REPEALED)*

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §§22-25 (AMD). 2001, c. 662, §47 (RP).

### §415-A. NONJUDICIAL PUNISHMENT

**1. Disciplinary punishment.** A commander may, in addition to or in lieu of admonition, reprimand or extra training, impose disciplinary punishments for minor offenses without the intervention of a court-martial as follows.

A. A company grade officer commander or warrant officer commander may impose one or more of the following punishments:

- (1) Forfeiture of up to one day's pay;
- (2) Up to 4 hours of extra duties; or
- (3) Prohibition of promotion of up to one year. [2001, c. 662, §48 (NEW).]

B. A field grade officer commander may impose one or more of the following punishments:

- (1) Forfeiture of up to 3 days' pay;
- (2) Up to 8 hours of extra duties; or

(3) Prohibition of promotion of up to one year. [ 2001, c. 662, §48 (NEW) . ]

C. An officer with the rank of colonel in the chain of command of an individual being considered for nonjudicial punishment may impose one or more of the following punishments:

(1) Forfeiture of up to 5 days' pay;

(2) Up to 16 hours of extra duties;

(3) Prohibition of promotion of up to one year; or

(4) Reduction of one grade for enlisted members. [ 2013, c. 251, §5 (AMD) . ]

D. Only a general officer commander may impose punishments upon officers. [ 2001, c. 662, §48 (NEW) . ]

E. An individual being considered for nonjudicial punishment has the right to consult counsel prior to receiving disciplinary punishment under this section. [ 2001, c. 662, §48 (NEW) . ]

[ 2013, c. 251, §5 (AMD) . ]

**2. Suspend; reduce.** The commander who imposes disciplinary punishment, or successor in command, may at any time suspend or reduce, or both, disciplinary punishment imposed.

[ 2001, c. 662, §48 (NEW) . ]

**3. Appeal.** A person punished under this section may appeal, through the proper channels, to the next higher commander. The appeal must be promptly forwarded and decided; in the meantime all disciplinary punishment is stayed. The commander to whom the appeal is referred may suspend or reduce, or both, the disciplinary punishment. Before ruling, the commander who is to act on the appeal may refer the case to a judge advocate for consideration. The commander to whom the appeal is referred shall submit the case to a judge advocate for review when the appeal is from a reduction in grade or forfeiture of 3 or more days of pay.

[ 2001, c. 662, §48 (NEW) . ]

**4. Increase.** Once nonjudicial punishment has been imposed, it may not be increased upon appeal or otherwise for the same offense.

[ 2001, c. 662, §48 (NEW) . ]

**5. Right to counsel.** A person that has disciplinary punishment imposed under this section has the right to assistance of military counsel in filing an appeal. There is no right to appeal the imposition of disciplinary punishment under this section to the civilian courts.

[ 2001, c. 662, §48 (NEW) . ]

**6. Serious crime.** The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial or to a trial in the civilian courts of this State, another state or the United States for a serious crime or offense growing out of the same act or omission that is not properly punishable under this section. The fact that a disciplinary punishment has been enforced may be shown by the accused at trial and must be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

[ 2001, c. 662, §48 (NEW) . ]

**7. Records.** The Governor may prescribe the form of records to be kept of proceedings under this section and may prescribe that the records must be in writing.

[ 2001, c. 662, §48 (NEW) . ]

**8. Enforcement.** A fine imposed pursuant to this section may be enforced as a money judgment in accordance with Title 14, chapter 502.

[ 2001, c. 662, §48 (NEW) . ]

**9. Pay.** For the purposes of this section, a "day's pay" means that pay a member is entitled to for one unit training assembly, also known as one drill period.

[ 2001, c. 662, §48 (NEW) . ]

#### SECTION HISTORY

2001, c. 662, §48 (NEW). 2013, c. 251, §5 (AMD).

## §416. COURT-MARTIAL

A court-martial shall have jurisdiction to try persons subject to this Code for any offense defined and made punishable by this Code. [1983, c. 460, §3 (NEW).]

A court-martial shall consist of: [1983, c. 460, §3 (NEW).]

**1. With panel.** A military judge and a panel of not less than 3 members; or

[ 1983, c. 460, §3 (NEW) . ]

**2. Without panel.** A military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves the request.

[ 1983, c. 460, §3 (NEW) . ]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §417. SENTENCES

Except as limited by rules prescribed by the Governor a court-martial may adjudge any one or a combination of the following punishments: [1983, c. 460, §3 (NEW).]

**1. Confinement.** Confinement at hard labor for not more than 6 months;

[ 1983, c. 460, §3 (NEW) . ]

**2. Hard labor.** Hard labor without confinement for not more than 3 months;

[ 1983, c. 460, §3 (NEW) . ]

**3. Forfeiture or detention of pay.** Forfeiture or detention of pay not exceeding 2/3 of base pay entitlement per month for 6 months;

[ 1983, c. 460, §3 (NEW) . ]

**4. Dismissal.** Dismissal;

[ 1983, c. 460, §3 (NEW) . ]

**5. Bad conduct discharge.** Bad conduct discharge;

[ 1983, c. 460, §3 (NEW) .]

**6. Dishonorable discharge.** Dishonorable discharge;

[ 1983, c. 460, §3 (NEW) .]

**7. Reprimand.** Reprimand; or

[ 1983, c. 460, §3 (NEW) .]

**8. Reduction to the lowest rank.** Reduction of noncommissioned officers to the lowest enlisted rank.

[ 2001, c. 662, §49 (AMD) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §49 (AMD).

## §418. JURISDICTION

The jurisdiction of a court-martial is limited to trial of persons subject to this Code who are accused of military offenses described in this Code. Persons subject to this Code who are accused of offenses cognizable by the civil courts of this State or any other state where the military forces are present may, upon accusation of a civil offense, be surrendered promptly to civil authorities for disposition if the mission of the military force will not be compromised. If the person subject to this Code is accused of both a military offense under this Code and a criminal offense by the civil authorities, that member may be prosecuted by either or both authorities and if found guilty, appropriately punished by either or both authorities. [2001, c. 662, §50 (AMD) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §26 (AMD). 2001, c. 662, §50 (AMD) .

## §419. CONVENING A COURT-MARTIAL

The convening authority of a court-martial under this Code shall be the Governor or the Adjutant General. [1983, c. 460, §3 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW) .

## §420. COMPOSITION OF COURT-MARTIAL

**1. Commissioned officer.** A commissioned officer is eligible to serve on any court-martial for the trial of a person who may lawfully be brought before the court for trial.

[ 1983, c. 460, §3 (NEW) .]

**2. Warrant officer.** A warrant officer is eligible to serve on a court-martial for the trial of a person, other than a commissioned officer, who may lawfully be brought before the court for trial.

[ 1983, c. 460, §3 (NEW) .]

**3. Enlisted member.** An enlisted member is eligible to serve on a court-martial for the trial of an enlisted member of an armed force who may lawfully be brought before the court for trial. An enlisted accused may not be tried by a court-martial that does not include in its membership enlisted members in a number comprising at least 1/3 of the total membership of the court.

[ 2001, c. 662, §51 (AMD) . ]

**4. Rank or grade.** Except where it cannot be avoided, a member of the military forces shall not be tried by a court-martial any member of which is junior to him in rank or grade. When convening a court-martial, the convening authority shall detail persons in the military forces who, in his opinion, are qualified for the duty by reason of age, education, training, experience, length of service and judicial temperament. No member of the military forces may serve as a member of a court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

[ 1983, c. 460, §3 (NEW) . ]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §51 (AMD).

## §421. MILITARY JUDGE

**1. Appointment.** The authority convening a court-martial shall designate a military judge to preside over each case.

[ 1983, c. 460, §3 (NEW) . ]

**2. Qualifications.** A military judge shall:

A. Possess the following military qualifications:

- (1) Be a commissioned officer of the state military forces;
- (2) Be a commissioned officer of the United States Armed Forces; or
- (3) Be a retired officer of the United States Armed Forces; and [ 1983, c. 460, §3 (NEW) . ]

B. Possess the following other qualifications:

- (1) Be a member of the bar of the Supreme Judicial Court; and
- (2) Be certified as being qualified to serve as military judge by the state judge advocate. [ 1983, c. 460, §3 (NEW) . ]

[ 1983, c. 460, §3 (NEW) . ]

**3. Accuser or witness ineligible.** No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigation officer or a counsel in the same case.

[ 1983, c. 460, §3 (NEW) . ]

**4. Duties.** A commissioned officer who is certified to be qualified for duty as a military judge of a court-martial may perform those duties only when he is assigned and directly responsible to the Adjutant General. He may perform duties of a judicial or nonjudicial nature other than those relating to his duty as a military



judge of a court-martial when those duties are assigned to him by or with the approval of the state judge advocate. The military judge of a court-martial may not consult with the members of the court, except in the presence of the accused, trial counsel and defense counsel, nor may he vote with the members of the court.

[ 1983, c. 460, §3 (NEW) . ]

SECTION HISTORY

1983, c. 460, §3 (NEW).

## §422. COUNSEL

**1. Appointment.** For each court-martial, the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge or court member in any case may act later as trial counsel, assistant trial counsel, or unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

[ 1983, c. 460, §3 (NEW) . ]

**2. Qualifications.** Trial counsel or defense counsel detailed for a court-martial:

A. Shall be:

- (1) A graduate of an accredited law school; and
- (2) A member of:
  - (a) The bar of this State;
  - (b) The bar of a federal court; or
  - (c) The bar of the highest court of another state; and [1983, c. 594, §27 (AMD) . ]

B. Shall be certified as competent to perform those duties by the state judge advocate. [1983, c. 460, §3 (NEW) . ]

[ 1983, c. 594, §27 (AMD) . ]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §27 (AMD).

## §423. COURT REPORTERS

The convening authority of a court-martial, shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. If a court reporter is not available, the Governor or Adjutant General may authorize the use of audio tape or other electronic transcription equipment to record proceedings. The convening authority of a court-martial, may detail or employ interpreters who shall interpret for the court. The Governor shall adopt rules to implement this section. [1983, c. 594, §28 (AMD) . ]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §28 (AMD).

## §424. MEMBERS OF COURT-MARTIAL

**1. Absence.** No member of a court-martial may be absent or excused after the court has been assembled for the trial of the accused, except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

[ 1983, c. 460, §3 (NEW) .]

**2. Vacancies.** Whenever a court-martial other than a court-martial composed of a single military judge is reduced below 3 members, the trial may not proceed until the convening authority details sufficient new members to provide at least 3 members. The trial may proceed with the new members present after the recorded evidence previously introduced to the court has been read to the court in the presence of the military judge, the accused and counsel for both sides.

[ 1983, c. 460, §3 (NEW) .]

**3. Military judge.** If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 425, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused and counsel for both sides.

[ 1983, c. 460, §3 (NEW) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §425. PRETRIAL PROCEDURES

Except as provided otherwise by this Code, the pretrial and trial procedures before a court-martial must be in accordance with the procedures set forth in the United States Uniform Code of Military Justice, Title 10, United States Code, Chapter 47, for a special court-martial and the United States Manual for Courts-Martial as each is revised from time to time. [2001, c. 662, §52 (AMD) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §52 (AMD).

## §426. LIMITATION OF CHARGES

A person may not be tried by court-martial or punished under section 415-A if the offense with which that person is charged was committed more than 2 years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction. [2001, c. 2, Pt. A, §44 (COR) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW). RR 2001, c. 2, §A44 (COR).

## §427. WITNESSES

**1. Oaths.** A military judge detailed under this Code may administer oaths.

[ 1983, c. 460, §3 (NEW) .]

**2. Subpoena.** A military judge, notary public or clerk of any District Court or Superior Court may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers and photographs relating to any questions in dispute before the court-martial or to any matters involved in a trial by court-martial.

[ 1983, c. 594, §29 (AMD) . ]

**3. Fees and mileage.** Fees and mileage payments shall be paid to witnesses at the rate allowed to witnesses attending the District Courts. The fees and mileage payments shall be paid out of the Military Fund.

[ 1983, c. 460, §3 (NEW) . ]

**4. Violation.** It is a Class E crime for a person not subject to this Code intentionally to fail to appear as a witness, refuse to qualify as a witness or refuse to produce evidence if that person:

A. Has been subpoenaed to give testimony or produce evidence; or [1983, c. 460, §3 (NEW) . ]

B. Has been paid fees and mileage as a witness. [1983, c. 460, §3 (NEW) . ]

**5. Prosecution.** The Attorney General may prosecute persons who violate this section.

[ 1983, c. 460, §3 (NEW) . ]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §29 (AMD).

## §428. EXECUTION OF SENTENCES

**1. Imprisonment.** Under instructions issued by the Governor, a sentence of imprisonment adjudged by a court-martial, whether or not the sentence includes discharge or dismissal and whether or not the discharge or dismissal has been executed, may be carried into execution by imprisonment in any place designated as provided in section 408. Persons confined in a correctional center not under the control of one of the military forces are subject to the same discipline and treatment as persons committed by the courts of the State.

Any period of imprisonment included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to imprisonment is suspended or deferred must be excluded in computing the service of the term of imprisonment.

[ 2001, c. 662, §53 (AMD) . ]

**2. Forfeiture.** Whenever a sentence includes both a forfeiture of pay and allowances and imprisonment and the imprisonment is not suspended or deferred, the forfeiture may apply only to pay or allowances becoming due on or after the date the sentence is approved by the convening authority.

[ 1983, c. 460, §3 (NEW) . ]

**3. Effective date.** Sentences of courts-martial are effective on the date ordered executed, except another date may be required by subsection 1 or 2.

[ 1983, c. 460, §3 (NEW) . ]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §53 (AMD).

## §429. RECORD OF TRIAL

After a trial by court-martial, the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command or any officer exercising court-martial jurisdiction. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §430. STATE JUDGE ADVOCATE'S OPINION

The convening authority shall refer the record of each court-martial to the state judge advocate, who shall submit written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §431. APPROVAL OF FINDINGS AND SENTENCE

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §432. RECONSIDERATION

**1. Return of record.** If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

[ 1983, c. 460, §3 (NEW) .]

**2. Errors.** Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case may the record be returned:

A. For reconsideration of a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty; [1983, c. 460, §3 (NEW).]

B. For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this Code; or [1983, c. 460, §3 (NEW).]

C. For increasing the severity of the sentence, unless the sentence imposed is less than the mandatory sentence prescribed for the offense. [1983, c. 460, §3 (NEW).]

[ 1983, c. 460, §3 (NEW) .]

**3. Rehearing.** A rehearing shall be ordered as follows.

A. If the convening authority disapproves of the findings and sentence, he shall state the reasons for disapproval, and he may order a rehearing, except where there is lack of sufficient evidence in the record to support the findings. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. [1983, c. 460, §3 (NEW).]

B. Each rehearing shall take place before a court-martial composed of members who were not members of the court-martial which first heard the case. Upon a rehearing, the accused may not be tried for any offense of which he was found not guilty by the first court-martial. No sentence more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. [1983, c. 460, §3 (NEW).]

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### **§433. APPEAL**

Upon petition of the accused, the Supreme Judicial Court shall review the record of any court-martial approved by the convening authority. [2001, c. 662, §54 (AMD).]

The accused shall file the petition for review within 30 days of the time the accused is notified of the approval of the case by the convening authority. [2001, c. 662, §54 (AMD).]

On the same date that the accused files the petition for review in the Supreme Judicial Court, the accused shall file a notice of the accused's intention to appeal with the convening authority. Within 30 days, the convening authority shall forward the complete transcript of the case to the Supreme Judicial Court. [2001, c. 662, §54 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §54 (AMD).

### **§434. JUDICIAL REVIEW**

In any case reviewed by it, the Supreme Judicial Court may act with respect to any of the findings and sentence as approved by the convening authority. The Supreme Judicial Court shall take action only with respect to matters of law. [1983, c. 460, §3 (NEW).]

If the Supreme Judicial Court sets aside the findings and sentence, it may order a rehearing, except where the setting aside is based on lack of sufficient evidence in the record to support the findings. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed. [1983, c. 460, §3 (NEW).]

After it has acted on a case, the Supreme Judicial Court may direct the convening authority to take action in accordance with its decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, the convening authority may dismiss the charges. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §435. APPROVAL BY THE GOVERNOR

No court-martial sentence may be executed until approved by the Governor. The Governor shall approve the sentence or such part, amount or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §436. NEW TRIAL

At any time after approval by the convening authority of a court-martial sentence, the accused may petition the state judge advocate for a new trial on the grounds of newly discovered evidence or fraud on the court. The state judge advocate shall review the petition, the record and such other evidence as he deems appropriate and report to the convening authority his recommendation to grant or deny a new trial. If a new trial is recommended, the convening authority shall order a rehearing as provided in section 432, subsection 3. Upon filing of the petition for a new trial, any proceedings pending upon appeal or review of sentence shall be dismissed. [1983, c. 594, §30 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §30 (AMD).

### §437. RESTORATION OF RIGHTS

All rights, privileges and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and that executed part is included in a sentence imposed upon the new trial or rehearing. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §438. INCLUDED OFFENSES

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §439. ATTEMPTS

An act done with specific intent to commit an offense under this Code, amounting to more than mere preparation and tending, even though failing, to effect its commission is an attempt to commit that offense. [1983, c. 460, §3 (NEW).]

Any person subject to this Code who attempts to commit any offense punishable by this Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed. [1983, c. 460, §3 (NEW).]

Any person subject to this Code may be convicted of an attempt to commit an offense although it appears at the trial that the offense was consummated. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §440. CONSPIRACY

Any person subject to this Code who conspires with any other person to commit an offense under this Code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §441. DESERTION

**1. Acts constituting.** Any member of the military forces who commits any of the following acts is guilty of desertion:

A. Without authority, goes or remains absent from his unit, organization or place of duty with intent to remain away permanently; [1983, c. 460, §3 (NEW).]

B. Quits his unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or [1983, c. 460, §3 (NEW).]

C. Being a commissioned officer of the military forces who, after tender of his resignation and before notice of his acceptance, quits his post or proper duties without leave and with intent to remain away permanently. [1983, c. 460, §3 (NEW).]

[ 1983, c. 460, §3 (NEW) .]

**2. Punishment.** Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

[ 1983, c. 460, §3 (NEW) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §442. ABSENT WITHOUT LEAVE

Any member of the military forces who, without authority, fails to go to his appointed place of duty at the time prescribed, or goes from that place, or absents himself or remains absent from his unit, organization or place of duty at which he is required to be at the time prescribed, shall be punished as a court-martial may direct. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §443. MISSING MOVEMENT

Any person subject to this Code who through neglect or design misses the movement of a ship, aircraft or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §444. DISRESPECT TO OFFICER

Any person subject to this Code who behaves with disrespect toward a superior officer must be punished as a court-martial may direct. [2001, c. 662, §55 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §55 (AMD).

## §445. STRIKING OR DISOBEYING AN OFFICER

Any person subject to this Code who strikes a superior officer or draws or lifts up any weapon or offers any violence against a superior officer while that officer is in the execution of that office or willfully disobeys a lawful command of the superior officer must be punished as a court-martial may direct. [2001, c. 662, §56 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §56 (AMD).

## §446. STRIKING OR DISOBEYING A NONCOMMISSIONED OFFICER

Any member who strikes or assaults an officer or noncommissioned officer while that officer or noncommissioned officer is in the execution of that office, willfully disobeys the lawful order of an officer or noncommissioned officer, or treats with contempt or is disrespectful in language or deportment toward an officer or noncommissioned officer while that officer or noncommissioned officer is in the execution of that office must be punished as a court-martial may direct. [2001, c. 662, §57 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §57 (AMD).

## §447. FAILURE TO OBEY ORDER

Any person subject to this Code who violates or fails to obey any lawful general order or regulation, or having knowledge of any other lawful order issued by a member of the military forces, which it is his duty to obey, fails to obey the order, or is derelict in the performance of his duties, shall be punished as a court-martial may direct. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §448. MUTINY; SEDITION

**1. Offense.** Any person subject to this Code who:

A. With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny; [1983, c. 460, §3 (NEW).]

B. With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence or other disturbance against that authority is guilty of sedition; or [1983, c. 460, §3 (NEW).]

C. Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition. [1983, c. 460, §3 (NEW).]

[ 1983, c. 460, §3 (NEW) .]



**2. Punishment.** A person who is found guilty of attempted mutiny, mutiny, sedition or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

[ 1983, c. 460, §3 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW).

## **§449. BREAKING ARREST**

Any person subject to this Code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

## **§450. UNDER INFLUENCE OF ALCOHOL OR DRUGS ON DUTY**

Any person subject to this Code who is found under the influence of alcoholic liquor or any drug while on duty or reporting for duty must be punished as a court-martial may direct. [2001, c. 662, §58 (AMD).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §58 (AMD).

## **§451. SENTINELS**

Any sentinel or lookout who is found sleeping upon his post or who leaves it before he is regularly relieved shall be punished as a court-martial may direct. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

## **§452. FEIGNING ILLNESS TO AVOID DUTY**

Any person subject to this Code who for the purpose of avoiding work, duty or service feigns illness, physical disablement, mental lapse or derangement or intentionally inflicts self-injury shall be punished as a court-martial may direct. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

## **§453. FALSE TESTIMONY**

Any person subject to this Code who in a judicial proceeding or in a court of justice willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

## §454. FALSE OFFICIAL STATEMENTS

Any person subject to this Code who, with intent to deceive, signs any false record, return, regulation, order or other official document, knowing it is false, or makes any other false official statement, knowing it is false, must be punished as a court-martial may direct. [1995, c. 214, §1 (NEW).]

### SECTION HISTORY

1995, c. 214, §1 (NEW).

## §455. CRUELTY AND MALTREATMENT

Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to that person's orders must be punished as a court-martial may direct. [2001, c. 662, §59 (NEW).]

### SECTION HISTORY

2001, c. 662, §59 (NEW).

## §456. MILITARY PROPERTY OF UNITED STATES OR STATE; SALE, LOSS, DAMAGE, DESTRUCTION OR WRONGFUL DISPOSITION

Any person subject to this Code must be punished as a court-martial may direct if that person, without proper authority, does any of the following with any military property of the United States or the State: [2001, c. 662, §59 (NEW).]

**1. Sells.** Sells or otherwise disposes of that military property;

[ 2001, c. 662, §59 (NEW) .]

**2. Damages or loses.** Willfully or through neglect damages, destroys or loses that military property; or

[ 2001, c. 662, §59 (NEW) .]

**3. Suffers to be lost; sold.** Willfully or through neglect suffers that military property to be lost, damaged, destroyed, sold or wrongfully disposed of.

[ 2001, c. 662, §59 (NEW) .]

### SECTION HISTORY

2001, c. 662, §59 (NEW).

## §457. WRONGFUL POSSESSION OF CONTROLLED SUBSTANCE

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

A. "Controlled substance" means:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, marijuana and any compound or derivative of any such substance;

(2) Any substance not specified in subparagraph (1) that is listed on a schedule of controlled substances prescribed by the President of the United States for the purposes of the Uniform Code of Military Justice; and

(3) Any other substance not specified in subparagraph (1) or contained on a list prescribed by the President of the United States under subparagraph (2) that is listed in schedules I to V of Section 202 of the Controlled Substances Act, 21 United States Code, Section 812. [2001, c. 662, §59 (NEW).]

[ 2001, c. 662, §59 (NEW) .]

**2. Prohibition.** Any person subject to this Code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle or aircraft used by or under the control of the state military forces a controlled substance described in subsection 1, must be punished as a court-martial may direct.

[ 2001, c. 662, §59 (NEW) .]

#### SECTION HISTORY

2001, c. 662, §59 (NEW).

## §458. LARCENY AND WRONGFUL APPROPRIATION

**1. Prohibitions.** Any person subject to this Code who wrongfully takes, obtains or withholds, by any means, from the possession of the owner or of any other person any money, personal property or article of value of any kind:

A. With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to the person's own use or the use of any person other than the owner, steals that property and is guilty of larceny; or [2001, c. 662, §59 (NEW).]

B. With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to the person's own use or the use of any person other than the owner, is guilty of wrongful appropriation. [2001, c. 662, §59 (NEW).]

[ 2001, c. 662, §59 (NEW) .]

**2. Punishment.** Any person found guilty of larceny or wrongful appropriation must be punished as a court-martial may direct.

[ 2001, c. 662, §59 (NEW) .]

#### SECTION HISTORY

2001, c. 662, §59 (NEW).

## §459. ASSAULT

**1. Prohibition; assault.** Any person subject to this Code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault.

[ 2001, c. 662, §59 (NEW) .]

**2. Prohibition; aggravated assault.** Any person subject to this Code is guilty of aggravated assault if that person:

A. Commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or [2001, c. 662, §59 (NEW).]

B. Commits an assault and intentionally inflicts grievous bodily harm with or without a weapon.

[2001, c. 662, §59 (NEW).]

[ 2001, c. 662, §59 (NEW) .]

**3. Punishment.** Any person found guilty of assault or aggravated assault must be punished as a court-martial may direct.

[ 2001, c. 662, §59 (NEW) .]

SECTION HISTORY

2001, c. 662, §59 (NEW).

## §460. BEHAVIOR THAT IS PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF MILITARY FORCES OR THAT DISCREDITS MILITARY FORCES

Any person subject to this Code who behaves in a manner that is prejudicial to the good order and discipline of the military forces or that discredits the military forces must be punished as a court-martial may direct. [2009, c. 406, §7 (NEW).]

SECTION HISTORY

2009, c. 406, §7 (NEW).

## §461. SEXUAL ASSAULT

**1. Prohibition; sexual assault.** Any person subject to this Code who commits an offense prohibited under Title 17-A, chapter 11 is guilty of that offense under this Code.

[ 2013, c. 251, §6 (NEW) .]

**2. Punishment.** Any person found guilty of an offense prohibited under Title 17-A, chapter 11 must be punished as a court-martial may direct.

[ 2013, c. 251, §6 (NEW) .]

SECTION HISTORY

2013, c. 251, §6 (NEW).

## Chapter 7: BUREAU OF MAINE VETERANS' SERVICES

### §501. PURPOSE

The Bureau of Maine Veterans' Services, referred to in this chapter as the "bureau," is established and shall provide informational services, program assistance, memorial facilities and financial aid to veterans in the State and their dependents in order to ensure that they receive all entitlements due under the law, are relieved to the extent possible of financial hardship, receive every opportunity for self-improvement through higher education and are afforded proper recognition for their service and sacrifice to the Nation. The bureau shall serve as the primary source of information for veterans in the State regarding all services, benefits and honors administered by the State and, to the maximum extent possible, services and benefits provided by the United States Department of Veterans Affairs, veterans' service organizations and other organizations dedicated to serving veterans. [2015, c. 465, Pt. A, §2 (AMD).]

The bureau acts as the primary public advocate for veterans before the United States Department of Veterans Affairs. [2001, c. 662, §60 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1991, c. 626, §8 (AMD). 1997, c. 455, §17 (AMD). 2001, c. 662, §60 (AMD). 2015, c. 465, Pt. A, §2 (AMD).

### §502. DIRECTOR OF BUREAU OF MAINE VETERANS' SERVICES

The Director of the Bureau of Maine Veterans' Services, referred to in this chapter as the "director," shall direct the operation of the bureau. [1997, c. 455, §18 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1991, c. 626, §8 (AMD). 1993, c. 694, §2 (AMD). 1997, c. 455, §18 (AMD).

### §503. POWERS AND DUTIES

The director has the following powers and duties. [1997, c. 455, §19 (AMD).]

**1. Employment of personnel.** The director may employ, subject to approval of the appointing authority and the Civil Service Law, the personnel necessary to administer this chapter. The director may employ a superintendent of the cemetery system, a veteran claims specialist and veteran service officers. The director and other employees referred to in this subsection must be veterans as defined by 38 United States Code, Section 101 (2) who were separated with an honorable discharge.

[ 2009, c. 406, §8 (AMD) .]

**2. Expenditures.** The director may make expenditures approved by the commissioner necessary to carry out this chapter.

[ 1997, c. 455, §19 (AMD) .]

**3. Agent.** The director shall act, upon request, as the agent of any Maine resident who has a legitimate claim against the United States for any benefit accruing as a result of any federal or state military service and, in cooperation with all public and private agencies, shall prosecute the claim without charge.

[ 2001, c. 662, §61 (AMD) .]

**4. Record.**

[ 2001, c. 662, §61 (RP) .]

**5. Rules.**

[ 1991, c. 626, §9 (RP) .]

**6. Other duties.**

[ 2001, c. 662, §61 (RP) .]

**7. Marketing and outreach program.** The director shall implement, as a core function of the bureau, a marketing and outreach program to increase, to the greatest extent practicable, awareness of services and benefits available to veterans and family members of veterans and to encourage veterans to seek the benefits and services to which they are entitled. The director is authorized to employ personnel dedicated to the marketing and outreach program objectives described in this subsection. The director is authorized to enter into memoranda of understanding with other state agencies to allow for the sharing of information to achieve the objectives of the program. Upon request of the director, agencies required to enter into memoranda of understanding with the director include, but are not limited to, the Bureau of Motor Vehicles under the Department of the Secretary of State, the Bureau of Parks and Lands under the Department of Agriculture, Conservation and Forestry, the Department of Inland Fisheries and Wildlife, the Department of Health and Human Services, the University of Maine System and the Maine Community College System. The marketing and outreach program objectives must include, but are not limited to:

A. Identifying residents of the State who are veterans; [2015, c. 465, Pt. A, §3 (NEW).]

B. Increasing awareness of the bureau for veterans and family members of veterans; [2015, c. 465, Pt. A, §3 (NEW).]

C. Implementing media and technology to encourage veterans to self-identify to the bureau and communicating to veterans and family members of veterans about the services and benefits available to them; [2015, c. 465, Pt. A, §3 (NEW).]

D. Attendance by bureau personnel at events organized for and by veterans that, as determined by the director, facilitate the objectives of this subsection; and [2015, c. 465, Pt. A, §3 (NEW).]

E. Establishing benchmarks to measure the effectiveness of marketing and outreach efforts. [2015, c. 465, Pt. A, §3 (NEW).]

The program objectives listed in this subsection may also be used to assist the commissioner to identify residents of this State who are military retirees or former members of the Army National Guard or Air National Guard who completed service requirements but never served on active duty pursuant to section 3, subsection 1, paragraph D, subparagraph (21).

[ 2015, c. 465, Pt. A, §3 (NEW) .]

**8. Records management system.** The director shall acquire and maintain an electronic database with secured remote access capabilities to facilitate management of records of veterans, spouses of veterans and veterans' dependents served by the bureau. When selecting a records management system, the director shall ensure that, at a minimum, the system supports the bureau in meeting the following objectives:

A. Reducing reliance on paper records; [2015, c. 465, Pt. A, §3 (NEW).]

B. Allowing for immediate access by authorized users to update records; [2015, c. 465, Pt. A, §3 (NEW).]

C. Displaying a complete record of assistance provided by the bureau to veterans and veterans' family members; and [2015, c. 465, Pt. A, §3 (NEW).]

D. Providing efficient and timely customer service to veterans seeking assistance from the bureau.  
[ 2015, c. 465, Pt. A, §3 (NEW). ]

[ 2015, c. 465, Pt. A, §3 (NEW) . ]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1985, c. 785, §B174 (AMD). 1989, c. 502, §A139 (AMD). 1991, c. 626, §9 (AMD). 1993, c. 694, §3 (AMD). 1997, c. 455, §19 (AMD). 1997, c. 643, §Q7 (AMD). 2001, c. 662, §61 (AMD). 2009, c. 406, §8 (AMD). 2015, c. 465, Pt. A, §3 (AMD).

### §503-A. RULES

The Commissioner of Defense, Veterans and Emergency Management may, in accordance with Title 5, chapter 375, subchapter II, adopt reasonable rules necessary to carry out this chapter, provided that regulations pertaining to the management of the Maine Veterans' Memorial Cemetery System are not rules within the meaning of Title 5, section 8002, subsection 9. [2001, c. 662, §62 (AMD). ]

#### SECTION HISTORY

1991, c. 626, §10 (NEW). 1997, c. 455, §32 (AMD). 2001, c. 662, §62 (AMD).

### §504. MAINE VETERANS' MEMORIAL CEMETERY SYSTEM

**1. Land acquisition.** The director may acquire by eminent domain in accordance with Title 35-A, chapter 65 and with approval of the Governor, or by purchase, gift or otherwise, real estate in fee simple, or any interest therein, for use by the Maine Veterans' Memorial Cemetery System.

[ 2001, c. 662, §63 (AMD) . ]

**2. Superintendent of the cemetery system.** The director, with approval of the appointing authority, shall appoint a competent and trustworthy superintendent of the cemetery system and shall arrange for personnel, material and equipment necessary for adequate maintenance of the cemeteries.

[ 2009, c. 406, §9 (AMD) . ]

**3. Monuments, buildings and markers.** The director shall erect a suitable monument in the center of each cemetery.

A. The monument must be suited to the topography of the land and display, on suitable flag poles, the national emblem and the state flag in accordance with the Flag Code. [1991, c. 626, §12 (AMD) . ]

B. The immediate area surrounding the monument must be prepared and reserved as a suitable place for commemorating Memorial Day and other appropriate observances. The remaining grounds must be laid out in a wheel-like pattern around the monument, expanding from the center as required. Suitable buildings may be erected for purposes the director determines necessary. [1997, c. 455, §22 (AMD) . ]

C. All grave markers must be flat-type granite or 42-inch upright white marble grave markers as furnished by the United States Department of Veterans Affairs, National Cemetery Administration. All boxes used for burial must be protected with permanent vaults. Permanent vaults must be reinforced and properly cured and match pounds per square inch specifications imposed by the National Cemetery

Administration. Vaults may be either water-resistant or waterproof or have drain holes in their liner boxes as long as they meet the stated specifications. Headstones and vaults are not provided at state expense. [2007, c. 167, §2 (RPR).]

[2007, c. 167, §2 (AMD) .]

**4. Burials.** Burials in the cemeteries must be as follows.

A. [1985, c. 117, §1 (RP).]

A-1. As used in this subsection, unless the context indicates otherwise, the following terms have the following meanings.

- (1) "Eligible dependent" means the wife, husband, surviving spouse, unmarried minor child, unmarried dependent child enrolled in secondary school or unmarried adult child who became incapable of self-support before reaching 18 years of age on account of mental or physical disabilities.
- (2) "Eligible veteran" means any person who:
  - (a) Served in the active United States Armed Forces and who:
    - (i) If discharged, received an honorable discharge or a general discharge under honorable conditions, provided that the discharge was not upgraded through a program of general amnesty;
    - (b) Served in the Maine National Guard and died as a result of injury, disease or illness sustained while serving on active state service as provided in chapter 3, subchapter 3;
    - (d) Served in the Reserve Components of the United States Armed Forces and was entitled to retired pay under 10 United States Code, chapter 1223 or would have been entitled to retired pay under chapter 1223 except that the person was under 60 years of age; or
    - (e) Died while serving in the Active Guard Reserve and whose death is determined to be in the line of duty. [2007, c. 521, §1 (AMD) .]

B. The director must allow the earth burial in one of the cemeteries of any eligible veteran who requests burial in the cemetery system. The director must allow the veteran the option of crypt burial if crypt space exists. All burials must be without charge. [1999, c. 401, Pt. II, §1 (AMD) .]

C. At the dependent's request, the director must allow an eligible dependent of a veteran to be buried in one of the cemeteries if, at the date of the dependent's death, the veteran would be eligible for burial. Dependents may be buried in the same grave as the veteran or adjacent to the veteran, in accordance with regional state veterans' cemetery procedures, without charge, so long as:

- (1) If the veteran dies first, the dependents specify in writing their intention to be so buried;
- (2) If the dependent dies first, the veteran specifies in writing the intention to be buried in the same grave as the dependent or adjacent to the dependent; or
- (3) Eligible family members of members of the armed services or veterans who are permanently buried overseas, buried at sea, missing in action and declared dead, or whose bodies are inaccessible for other reasons, may be buried in one of the cemeteries if the deceased member of the armed services or veteran was eligible for the burial at the time of death. [2007, c. 167, §3 (AMD) .]

D. The plots must be reserved as necessary and a permanent record of all burials must be kept. [1999, c. 401, Pt. II, §1 (AMD) .]

E. Remains of eligible veterans or eligible dependents previously buried in other cemeteries may be reinterred in one of the cemeteries upon request, as long as no cost other than that which would be incurred in an original burial is borne by the State. [2007, c. 167, §4 (AMD) .]



F. This subsection may not be construed to obligate the State beyond the furnishing of a grave site, opening and closing of the grave and maintenance of the grave and the cemeteries thereafter in perpetuity. [1999, c. 401, Pt. II, §1 (AMD).]

G. The interment of an eligible veteran or eligible dependent is permanent and final except that the director may allow disinterment as long as there is no cost to the State. [2011, c. 539, §1 (NEW).]

H. A person is not eligible for interment under this chapter if the person has:

- (1) Been convicted of the crime of murder;
- (2) Been convicted of a crime in another jurisdiction punishable by a sentence of life imprisonment or death;
- (3) Been convicted of a Class A or Class B crime under:
  - (a) Title 17-A, chapter 11;
  - (b) Title 17-A, chapter 12; or
  - (c) Title 17-A, section 301, subsection 1, paragraph A, subparagraph (3);
- (4) Been convicted of a Class C crime under Title 17-A, section 853, subsection 1;
- (5) Been convicted of a military, tribal or federal offense requiring registration pursuant to the federal Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 42 United States Code, Chapter 151;
- (6) Been convicted under any other jurisdiction's sex offender laws requiring the person to register for life; or
- (7) Been found to have committed any crime listed in subparagraphs (1) to (6) but has not been convicted because the person has not been available for trial due to the person's death or flight to avoid prosecution. A finding under this subparagraph must be made by the appropriate federal official. Any such finding may be based only upon a showing of clear and convincing evidence, after an opportunity for a hearing in a manner prescribed by the appropriate federal official. For purposes of this subparagraph, "appropriate federal official" means the Secretary of Veterans Affairs, in the case of the National Cemetery Administration, or the Secretary of the Army, in the case of the Arlington National Cemetery. [2015, c. 175, §1 (NEW).]

[ 2015, c. 175, §1 (AMD) .]

**5. Weekend visitation.** The director of the cemetery system shall arrange for public access during weekend daylight hours and regularly scheduled weekday visiting hours unless closure of the cemetery is considered necessary by the director for security or public safety purposes.

[ 2007, c. 368, §1 (AMD) .]

**6. Maine Veterans' Memorial Cemetery Maintenance Fund.** There is established the Maine Veterans' Memorial Cemetery Maintenance Fund, an interest-bearing account, referred to in this subsection as "the fund." The fund receives money deposited by the Treasurer of State pursuant to Title 36, section 5289 and any other money contributed voluntarily to the fund. All money deposited in the fund and the earnings on that money remain in the fund to be used for the maintenance and upkeep of Maine veterans' cemeteries and for the necessary administrative and personnel costs associated with the management of the fund. Money in the fund may not be deposited in the General Fund or any other fund except as specifically provided by law.

[ 2005, c. 519, Pt. RRR, §2 (NEW); 2005, c. 519, Pt. RRR, §3 (AFF) .]

**7. Flag placement program.** The director of the cemetery system shall establish a program to facilitate the placement of 12-inch by 18-inch American flags at the graves of veterans buried in the Maine Veterans' Memorial Cemetery System. This program must allow for volunteer organizations to place flags on graves beginning 2 days prior to the day Memorial Day is observed and for removal by volunteer organizations 3 days after the day Memorial Day is observed. The director of the cemetery system shall permit a limited extension beyond the 3 days, so that the flags do not have to be removed in inclement weather. The director of the cemetery system is authorized to use funds as provided in subsection 8 and to accept private donations of flags, tools or other equipment necessary to implement the program.

[ 2007, c. 368, §2 (NEW) .]

**8. Flag placement fund.** There is established the Maine Veterans' Memorial Cemetery Flag Placement Fund, an interest-bearing account, referred to in this subsection as "the fund." The fund receives money appropriated from the General Fund and any other money contributed voluntarily to the fund. All money deposited in the fund and the earnings on that money remain in the fund to be used to implement the flag placement program as described in subsection 7, specifically for the purchase of new flags as needed to ensure each veteran's grave is decorated as required by subsection 7 and as replacements for damaged flags. Money in the fund may not be deposited in the General Fund or any other fund except as specifically provided by law.

[ 2007, c. 368, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1985, c. 117, §§1,2 (AMD). 1987, c. 141, §B35 (AMD). 1989, c. 96, (AMD). 1989, c. 502, §D21 (AMD). 1989, c. 669, §§1,2 (AMD). 1991, c. 247, (AMD). 1991, c. 626, §§11-15 (AMD). 1993, c. 150, §1 (AMD). 1993, c. 427, §8 (AMD). 1993, c. 680, §A33 (AMD). 1993, c. 694, §§4-7 (AMD). 1997, c. 455, §§20-24 (AMD). 1997, c. 783, §2 (AMD). 1999, c. 401, §II1 (AMD). 1999, c. 462, §4 (AMD). 1999, c. 517, §1 (AMD). 1999, c. 531, §D1 (AMD). 1999, c. 531, §D2 (AFF). 1999, c. 790, §D11 (AMD). 2001, c. 662, §§63-65 (AMD). 2005, c. 273, §1 (AMD). 2005, c. 519, §RRR2 (AMD). 2005, c. 519, §RRR3 (AFF). 2007, c. 167, §§2-5 (AMD). 2007, c. 368, §§1-3 (AMD). 2007, c. 521, §1 (AMD). 2009, c. 406, §9 (AMD). 2011, c. 539, §1 (AMD). 2015, c. 175, §1 (AMD).

## §505. AID TO VETERANS AND THEIR DEPENDENTS

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

### 1. Financial assistance.

[ 2001, c. 439, Pt. QQ, §1 (RP) .]

**1-A. (TEXT EFFECTIVE UNTIL 12/13/18) Financial assistance.** Financial assistance may be granted as follows.

A. The bureau may provide a grant of temporary assistance not to exceed \$600 to a veteran currently a resident of this State who has filed a valid claim for a veteran's pension, pending notification of the award of such a pension, if that veteran is not incarcerated or a permanent resident of a nursing home and requests such assistance. For purposes of this paragraph, "claim for a veteran's pension" means a claim filed with the federal Veterans' Administration pursuant to 38 United States Code, Chapter 15. [ 2009, c. 415, Pt. A, §24 (RPR) .]

B. The bureau may provide a grant of emergency assistance not to exceed \$500 to a veteran currently a resident of this State who demonstrates to the bureau's satisfaction a financial need and suffers an emergency, such as damage to that veteran's home due to fire, flood or hurricane, that is not fully

compensable by insurance; illness or the illness of an immediate family member; or a similar emergency. In the case of a veteran with terminal illness or catastrophic injury, the director may provide a grant of up to \$1,000. No more than \$1,000 in emergency assistance may be provided to a veteran in any 12-month period. For the purposes of this paragraph, "veteran" has the same meaning as "eligible veteran" in section 504, subsection 4, paragraph A-1. Grants may not be issued for fuel assistance or due to loss of income due to unemployment while the veteran is receiving other unemployment benefits. [ 2009, c. 415, Pt. A, §25 (RPR). ]

C. A veteran who requests either temporary assistance under paragraph A or emergency assistance under paragraph B and is denied such assistance may request a reconsideration and review of this decision. Requests for reconsideration of a claim must be reviewed by the director and the commissioner or the commissioner's designee, and the decision after the reconsideration is final and may not be appealed to a court. [ 2007, c. 678, §1 (AMD). ]

D. The department may adopt rules to implement this subsection. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [ 2007, c. 521, §2 (AMD); 2007, c. 678, §1 (AMD). ]

[ 2007, c. 521, §2 (AMD); 2007, c. 678, §1 (AMD); 2009, c. 415, Pt. A, §§24, 25 (AMD) . ]

**1-A. (TEXT REPEALED 12/13/18) Financial assistance.**

[ 2007, c. 521, §2 (AMD); 2007, c. 678, §1 (AMD); 2017, c. 419, §5 (RP) . ]

**1-B. (TEXT EFFECTIVE 12/13/18) Veterans Temporary Assistance Fund.** The Veterans Temporary Assistance Fund, referred to in this section as "the fund," is established as a dedicated, nonlapsing Other Special Revenue Funds account in the bureau. The fund is administered and used by the director for the purposes of offering financial assistance to veterans as prescribed by subsection 1-C.

[ 2017, c. 419, §6 (NEW) . ]

**1-C. (TEXT EFFECTIVE 12/13/18) Financial assistance.** The following provisions apply to grants of temporary financial assistance to veterans.

A. The bureau may provide a grant of temporary assistance not to exceed \$2,000 to a veteran currently a resident of this State who has filed a valid claim for a veteran's pension, pending notification of the award of such a pension. For purposes of this paragraph, "claim for a veteran's pension" means a claim filed with the United States Department of Veterans Affairs pursuant to 38 United States Code, Chapter 15. [ 2017, c. 419, §6 (NEW) . ]

B. The bureau may provide a grant of temporary assistance not to exceed \$2,000 to a veteran currently a resident of this State who demonstrates to the bureau's satisfaction a financial need and suffers an emergency, including but not limited to:

- (1) Damage to that veteran's home due to fire, flood or hurricane that is not fully compensable by insurance;
- (2) Illness or the illness of an immediate family member; or
- (3) Hardship that would result in the veteran becoming homeless. [ 2017, c. 419, §6 (NEW) . ]

C. A veteran who requests temporary assistance under this subsection and is denied such assistance by the bureau may request a reconsideration and review of this decision. Requests for reconsideration of a claim must be reviewed by the director and the commissioner or the commissioner's designee, and the decision after the reconsideration is final and may not be appealed to a court. [ 2017, c. 419, §6 (NEW) . ]

D. The bureau may contract with an organization incorporated in the State as a nonprofit corporation in accordance with Title 13-B or an organization with tax-exempt status under 26 United States Code, Section 501(c) for the purpose of providing temporary financial assistance to veterans as described in this subsection. A contract authorized under this subsection may provide only for the distribution of direct temporary financial assistance to veterans and may not provide for compensation for personnel costs of the organization, funding of positions of employment within the organization or administrative costs of the organization except those directly related to the distribution of temporary financial assistance grants to veterans. [ 2017, c. 419, §6 (NEW) . ]

E. The department may adopt rules to implement this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [ 2017, c. 419, §6 (NEW) . ]

For the purposes of this subsection, "veteran" has the same meaning as "eligible veteran" in section 504, subsection 4, paragraph A-1. The director may also determine eligibility for temporary financial assistance on a case-by-case basis.

[ 2017, c. 419, §6 (NEW) . ]

**2. Educational benefits.** Educational benefits are granted as follows.

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

(1) "Child" means a natural child whose mother or father is or was a veteran or a child who was adopted prior to turning 18 years of age and whose adoptive mother or father is or was a veteran and who:

(a) Is at least 16 years of age;

(b) Has graduated from high school; and

(c) Enrolled in a degree program and was awarded benefits under this subsection prior to the child's 22nd birthday. If the child is unable to enroll in a degree program prior to turning 22 years of age due to service in the United States Armed Forces, then the child may apply to begin this benefit until reaching 26 years of age. Other requirements must be met as described in paragraph F.

"Child" includes a stepchild whose parent is married to an eligible veteran for at least 5 years and remains married to the veteran during the period for which benefits are received.

(2) "Spouse" means the person currently legally married to a living veteran or the unremarried widow or widower of a deceased veteran, not previously divorced from that veteran.

Awards under the educational benefits program are authorized to provide benefits to only one spouse per veteran.

(3) "Veteran" means any person who served in the military or naval forces of the United States and entered the service from this State or has been a resident of this State for 5 years immediately preceding application for aid and, if living, continues to reside in this State throughout the duration of benefits administered under the educational benefits program and who:

(a) Has a total permanent disability resulting from a service-connected disability as a result of service;

(b) Was killed in action;

(c) Died from a service-connected disability as a result of service;

(d) At the time of death was totally and permanently disabled due to service-connected disability, but whose death was not related to the service-connected disability; or

(e) Is a member of the Armed Forces on active duty who has been listed for more than 90 days as missing in action, captured or forcibly detained or interned in the line of duty by a foreign government or power.

The continuous residency requirement of this subparagraph does not apply to a person who is receiving educational benefits under this chapter on or before January 1, 2006. [ 2017, c. 108, §6 (AMD) . ]

B. [ 2001, c. 662, §66 (RP) . ]

C. [ 2001, c. 662, §66 (RP) . ]

D. [ 2001, c. 662, §66 (RP) . ]

E. Spouses of veterans who are attending state-supported postsecondary vocational schools or institutions of collegiate grade must be admitted free of tuition including mandatory fees and lab fees for a certificate program or an associate's, bachelor's or master's degree program. Room and board may not be waived. Spouses are entitled to receive up to 120 credit hours of educational benefits and have 10 years from the date of first entrance to complete the program. This paragraph applies to all spouses enrolled in the educational benefits program as of September 1, 2007. [ 2007, c. 521, §4 (AMD); 2007, c. 521, §6 (AFF) . ]

F. A child of a veteran who is attending state-supported postsecondary vocational schools or institutions of collegiate grade must be admitted free of tuition including mandatory fees and lab fees for associate and bachelor's programs. The tuition waiver provided under this paragraph may be reduced by an amount necessary to ensure that the value of this waiver, combined with all other grants and benefits received by the student, does not exceed the total cost of education. Room and board may not be waived. A child of a veteran has 6 academic years from the date of first entrance to complete 120 credit hours. For degree programs that require more than 120 credit hours, the state-supported postsecondary vocational school or institution of collegiate grade may grant a tuition waiver beyond 120 credit hours. If such a waiver is granted, the state-supported postsecondary vocational school or institution of collegiate grade shall notify the director. The director may waive the limit of 6 consecutive academic years when the recipient's education has been interrupted by severe medical disability, learning disability, illness or other hardship, making continued attendance impossible, however, the extension may not exceed 2 academic years. Students must maintain at least a 2.0 or "C" grade point average to continue receiving educational benefits. If a student's grade point average falls below 2.0 or a "C," then the student has one semester to bring the grade point average up to at least 2.0 or a "C." If after that semester the student's grade point average is below 2.0 or a "C," the student loses educational benefits under this paragraph until the student achieves a grade point average of at least 2.0 or a "C." [ 2013, c. 569, §3 (AMD) . ]

G. In order to be eligible for benefits under this subsection, a student must apply for a Federal Pell Grant under 20 United States Code, Section 1070a. The director shall estimate the number of students anticipated that will use this program and provide the estimate to state institutions upon request. [ 2013, c. 237, §1 (AMD) . ]

H. A school that provides tuition assistance pursuant to this subsection shall provide any information, such as enrollment verification, current contact information, semester grade point average, accumulated credit hours and transcripts, to the bureau as necessary for the bureau to properly administer the educational benefits described in this subsection in accordance with current laws. [ 2009, c. 406, §10 (NEW) . ]

[ 2013, c. 365, §1 (AMD); 2017, c. 108, §6 (AMD) . ]

**3. Fraud.** Whoever knowingly makes a false statement, oral or written, relating to a material fact in support of application for aid under this section is guilty of a violation of Title 17-A, section 353.

[ 1983, c. 460, §3 (NEW) . ]

**4. Vietnam and atomic veterans.**

[ 2001, c. 662, §67 (RP) .]

**5. Public assistance designation.** Assistance granted to veterans or their dependents pursuant to this section is designated public assistance. The department retains administrative responsibility for assistance granted under this section.

[ 2007, c. 539, Pt. N, §73 (AMD) .]

**6. Determination of residency.** The bureau shall verify that a person seeking benefits as provided by this section is a current resident of the State. The forms of identification sufficient to determine residency in accordance with this section are:

- A. A valid state driver's license; [2007, c. 521, §5 (NEW) .]
- B. A valid state-issued identification card; [2007, c. 521, §5 (NEW) .]
- C. A current state motor vehicle registration form; [2007, c. 521, §5 (NEW) .]
- D. A current state fishing or hunting license; and [2007, c. 521, §5 (NEW) .]
- E. Items other than those listed in paragraphs A to D that allow the bureau to reasonably determine residency. [2007, c. 521, §5 (NEW) .]

[ 2007, c. 521, §5 (NEW) .]

**SECTION HISTORY**

1983, c. 460, §3 (NEW). 1989, c. 502, §A140 (AMD). 1989, c. 547, §2 (AMD). 1991, c. 555, §1 (AMD). 1991, c. 626, §§16-18 (AMD). 1993, c. 273, §2 (AMD). 1993, c. 427, §9 (AMD). 1993, c. 694, §8 (AMD). 1997, c. 455, §§25-27 (AMD). 2001, c. 439, §§QQ1,2,UU2 (AMD). 2001, c. 662, §§66,67 (AMD). 2005, c. 273, §2 (AMD). 2007, c. 167, §§6-8 (AMD). 2007, c. 521, §§2-5 (AMD). 2007, c. 521, §6 (AFF). 2007, c. 539, Pt. N, §73 (AMD). 2007, c. 678, §1 (AMD). 2009, c. 406, §10 (AMD). 2009, c. 415, Pt. A, §§24, 25 (AMD). 2013, c. 237, §1 (AMD). 2013, c. 365, §1 (AMD). 2013, c. 569, §3 (AMD). 2017, c. 108, §6 (AMD). 2017, c. 419, §§5, 6 (AMD).

**§506. CERTAIN DOCUMENTS CONFIDENTIAL**

All claims and documents pertaining to claims for benefits under this chapter, whether pending or adjudicated, are confidential and privileged. No disclosure of those claims or documents may be made without the written consent of the claimant, except that disclosure may be made: [1983, c. 460, §3 (NEW) .]

**1. Claimant or representative.** To the claimant personally, as to matters concerning the claimant alone, when, in the director's judgment, the disclosure would not be injurious to the claimant's physical or mental health, or to the claimant's duly appointed guardian or duly authorized representative holding a power or appointment approved by the supervisor;

[ 1997, c. 455, §28 (AMD) .]

**2. Veterans' organization.** To the representative of a veterans' organization holding power of appointment from the claimant, provided that the organization is recognized by the United States Government and duly certified as such by the state department of the organization;

[ 1983, c. 460, §3 (NEW) .]

**3. Courts.** To any court of competent jurisdiction, when required by the process of the court, in an action pending under the laws of this State or the United States; and

[ 1983, c. 460, §3 (NEW) .]

**4. Agencies engaged in health and welfare work.** To any public or private agency engaged in health, welfare, rehabilitation or child placement work, from whom a veteran or that veteran's dependents have requested services, when, in the veteran advocate's judgment, disclosure is essential to the proper evaluation of the request.

[ 2001, c. 662, §68 (AMD) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1991, c. 626, §19 (AMD). 1993, c. 694, §9 (AMD). 1997, c. 455, §28 (AMD). 2001, c. 662, §68 (AMD).

### §507. AUTHORITY TO RECEIVE FEDERAL FUNDS

The bureau may accept federal funds under any federal law now in effect or hereafter enacted that makes these funds available to the states for: [1997, c. 455, §29 (AMD) .]

**1. Furnish information to veterans, beneficiaries and dependents.** Furnishing information to veterans and their beneficiaries and dependents concerning their rights under laws of the United States and other states relating to veterans' benefits;

[ 1983, c. 460, §3 (NEW) .]

**2. Provide assistance.** Providing assistance in making application for benefits;

[ 1983, c. 460, §3 (NEW) .]

**3. Reemployment and readjustment.** Furnishing information and assistance respecting reemployment and other matters concerning the readjustment of veterans to civilian life;

[ 2001, c. 662, §69 (AMD) .]

**4. Federal requirements.** Meeting such federal requirements regarding the administration of federal funds as may be conditions precedent to the receipt of these funds; and

[ 2001, c. 662, §69 (AMD) .]

**5. Cemetery construction and maintenance.** The state cemetery grants program.

[ 2001, c. 662, §70 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1991, c. 626, §20 (AMD). 1997, c. 455, §29 (AMD). 2001, c. 662, §§69,70 (AMD).

## §507-A. CUSTODIAN TO PROVIDE COPIES

When a copy of any public record is required by the United States Veterans' Administration to be used in determining the eligibility of any person to participate in benefits made available by the United States Veterans' Administration, the official custodian of that public record shall, without charge, provide the applicant for these benefits, or any person acting on his behalf or the authorized representative of the United States Veterans' Administration, with a certified copy of that record. [1983, c. 594, §31 (NEW).]

### SECTION HISTORY

1983, c. 594, §31 (NEW).

## §508. VETERAN SERVICE OFFICERS

Veteran service officers shall serve, assist and advocate for all veterans. A veteran service officer must be trained and conversant on the issues, benefits and definitions affecting all veterans, including atomic, Vietnam, Desert Storm and female veterans. The bureau shall have at least one veteran service officer who specializes in female veterans' issues. [2013, c. 569, §4 (AMD).]

A veteran service officer may not knowingly present or prosecute a fraudulent claim against the United States or knowingly provide false information to the United States; demand or accept unlawful compensation for preparing, presenting or prosecuting a claim or advising or consulting concerning a claim; or knowingly present to the United States Department of Veterans Affairs a frivolous claim, issue or argument. A claim, issue or argument is frivolous if the veteran service officer is unable to make a good faith argument on the merits of the position taken or to support the position taken by a good faith argument for an extension, modification or reversal of existing law. [2017, c. 108, §7 (NEW).]

### SECTION HISTORY

2001, c. 662, §71 (NEW). 2009, c. 406, §11 (AMD). 2013, c. 569, §4 (AMD). 2017, c. 108, §7 (AMD).

## §509. CONFIDENTIALITY OF MILITARY SERVICE RECORDS

**1. Certificate of release.** A certificate of release or discharge, casualty report, death notice or other record pertaining to active duty service issued by the United States Government, classified by the United States Government as confidential and filed for safekeeping with any state, county or local government authority is confidential for a period of 62 years following its date of issuance. During that 62-year period, it is unlawful for a person to permit inspection of the record, to disclose information contained in the record or to issue a copy of all or any part of the record except as authorized by this section or by court order. Nothing in this section may be construed to make a record confidential that is not directed to be confidential by the United States Government.

[ 2013, c. 237, §2 (AMD) . ]

**2. Identification.** Upon presentation of proper identification, any of the following persons may examine a record filed pursuant to this section and obtain free of charge a copy or certified copy of all or part of the record:

- A. The person who is the subject of the record; [2003, c. 404, §7 (NEW).]
- B. The spouse or next of kin of the person who is the subject of the record; [2003, c. 404, §7 (NEW).]
- C. A person named in an appropriate power of attorney executed by the person who is the subject of the record; [2003, c. 404, §7 (NEW).]
- D. The administrator, executor, guardian or legal representative of the person who is the subject of the record; [2003, c. 404, §7 (NEW).]



E. An attorney for any person specified in paragraphs A to D of this subsection; [ 2005, c. 273, §3 (AMD). ]

F. A civilian employee or military member of the department when in the conduct of official duties; [ 2015, c. 175, §2 (AMD). ]

G. The chief executive officer of the Maine Veterans' Homes when in the conduct of official duties; or [ 2015, c. 397, §3 (AMD). ]

H. An authorized representative of the Department of Labor when in the conduct of official duties. [ 2015, c. 175, §4 (NEW). ]

[ 2015, c. 397, §3 (AMD) . ]

**3. Records.** Records kept pursuant to this section may not be reproduced or used in whole or in part for any commercial or speculative purposes.

[ 2003, c. 404, §7 (NEW) . ]

**4. Disclose.** An individual, agency or court that obtains information pursuant to this section may not disseminate or disclose the information or any part of this information except as authorized in this section or otherwise by law.

[ 2003, c. 404, §7 (NEW) . ]

**5. Release of information for veterans honor roll.** Upon request in a manner determined by the bureau, the bureau may release the following information relating to a person from a municipality who has honorably served in the United States Armed Forces to a municipal official, as defined in Title 30-A, section 2001, subsection 11, for the purpose of establishing or updating a veterans honor roll in that municipality:

A. The name of the person; [ 2011, c. 481, §1 (NEW). ]

B. The date the person entered the service; [ 2011, c. 481, §1 (NEW). ]

C. The branch of the service entered; and [ 2011, c. 481, §1 (NEW). ]

D. The date the person was honorably discharged. [ 2011, c. 481, §1 (NEW). ]

[ 2011, c. 481, §1 (NEW) . ]

**6. Release of information about military status; false claims.** Upon request by a law enforcement officer or a prosecutor, the bureau may release information regarding a person's military service for the purposes of investigating alleged false claims of service or decoration awarded for service in the Armed Forces of the United States or a state military force.

[ 2015, c. 21, §2 (NEW) . ]

#### SECTION HISTORY

2003, c. 404, §7 (NEW). 2005, c. 273, §§3,4 (AMD). 2011, c. 481, §1 (AMD). 2013, c. 237, §2 (AMD). 2015, c. 21, §2 (AMD). 2015, c. 175, §§2-4 (AMD). 2015, c. 397, §3 (AMD).

## §510. COMMEMORATIVE CERTIFICATES, COINS AND MEDALS

A commemorative certificates, coins and medals recognition program is established as follows. [ 2005, c. 273, §5 (NEW). ]

**1. Design; construct; issue.** The director is authorized to design, construct and issue commemorative certificates, coins and medals honoring Maine's veterans serving in different conflicts. For World War II, the Korean Conflict and the Vietnam War, the commemorative items must be of a design similar to the World War II, Korean Conflict and Vietnam War plaques that are displayed in the Hall of Flags in the State House.

[ 2005, c. 273, §5 (NEW) .]

**2. Solicit donations.** The bureau is authorized to solicit donations from private citizens, corporations and entities to help fund the design, construction and issuance of commemorative items under this section.

[ 2005, c. 273, §5 (NEW) .]

**3. Advisory committee.** The bureau shall establish an advisory committee of interested persons, including, but not limited to, veterans of the Persian Gulf War and the wars in Iraq and veterans from the period from 1947 to 1990, to develop commemorative items honoring veterans. Approval of commemorative items rests with the Commissioner of Defense, Veterans and Emergency Management.

[ 2005, c. 273, §5 (NEW) .]

**4. Purchase by public.** Specially identified commemorative certificates, coins and medals may be sold to the public as long as they are distinctive from those items awarded to the actual veterans.

[ 2005, c. 273, §5 (NEW) .]

#### SECTION HISTORY

2005, c. 273, §5 (NEW).

### §511. FUND ESTABLISHED

A nonlapsing fund is established for the purpose of receiving funds from the State, donations from private citizens, corporations and entities and funds from the sales of commemorative items to pay the costs of the program established under section 510. [2005, c. 273, §5 (NEW).]

#### SECTION HISTORY

2005, c. 273, §5 (NEW).

### §512. MAINE VETERANS' MEMORIAL CEMETERY SYSTEM CARE FUND

**1. Maine Veterans' Memorial Cemetery System Care Fund establishment; purpose.** The Maine Veterans' Memorial Cemetery System Care Fund, known in this section as "the fund," is established for the purpose of ensuring ongoing care and maintenance of veterans' graves within the Maine Veterans' Memorial Cemetery System after plot interment allowances for burials within the system are no longer received from the United States Department of Veterans Affairs. The fund is established from deposits of 1/3 of the funds received from the United States Department of Veterans Affairs for plot interment allowances and from annual deposits from the Coordinated Veterans Assistance Fund established by section 514. The fund may also accept private and public donations. The fund is separate from other perpetual care or cemetery maintenance funds that support veterans' cemeteries and were established prior to the effective date of this section.

[ 2013, c. 128, §2 (AMD) .]

#### SECTION HISTORY

2009, c. 471, §1 (NEW). 2013, c. 128, §2 (AMD).

## §512-A. MAINE VETERANS' MEMORIAL CEMETERY SYSTEM CARE FUND ADVISORY BOARD

**1. Maine Veterans' Memorial Cemetery System Care Fund Advisory Board; establishment.** The Maine Veterans' Memorial Cemetery System Care Fund Advisory Board, as established by Title 5, section 12004-I, subsection 5-C and referred to in this section as "the board," shall monitor, facilitate and provide recommendations for the administration, management and use of the Maine Veterans' Memorial Cemetery System Care Fund.

[ 2013, c. 569, §5 (NEW) . ]

**2. Members.** The board consists of the following 7 members appointed by the Commissioner of Defense, Veterans and Emergency Management:

A. One member representing the interests of the Commissioner of Defense, Veterans and Emergency Management; [2013, c. 569, §5 (NEW) . ]

B. One member representing the interests of the Treasurer of State; [2013, c. 569, §5 (NEW) . ]

C. One member representing the interests of the American Legion or a successor organization; [2013, c. 569, §5 (NEW) . ]

D. One member representing the interests of the Veterans of Foreign Wars or a successor organization; [2013, c. 569, §5 (NEW) . ]

E. One member representing the interests of Disabled American Veterans or a successor organization; [2013, c. 569, §5 (NEW) . ]

F. One member representing the interests of American Veterans or a successor organization; and [2013, c. 569, §5 (NEW) . ]

G. One member representing the interests of an organization that provides a forum for veterans' organizations to work together on behalf of veterans in the State. [2013, c. 569, §5 (NEW) . ]

[ 2013, c. 569, §5 (NEW) . ]

**3. Vacancies.** In the event of a vacancy on the board, the Commissioner of Defense, Veterans and Emergency Management shall appoint a new member to fill the vacancy until the expiration of the term. A vacancy on the board must be filled in the same manner as the original appointment was made under subsection 2.

[ 2013, c. 569, §5 (NEW) . ]

**4. Terms.** Members of the board are appointed for 3-year terms.

[ 2013, c. 569, §5 (NEW) . ]

**5. Removal.** The Commissioner of Defense, Veterans and Emergency Management may remove a member of the board for cause.

[ 2013, c. 569, §5 (NEW) . ]

**6. Voting; quorum.** A quorum consists of 5 members of the board. Each member has one vote. A recommendation may not be approved by the board without at least 3 affirmative votes.

[ 2013, c. 569, §5 (NEW) . ]

**7. Board proceedings.** The board shall meet not less than annually at a date and time set by the director. The director shall prepare the agenda and prepare and keep a summarized record of meetings. The board may not make binding decisions but shall vote on recommendations. The director shall be present at the meetings to facilitate the meetings. The director does not have a vote.

[ 2013, c. 569, §5 (NEW) .]

#### SECTION HISTORY

2013, c. 569, §5 (NEW).

## §513. HOMELESSNESS PREVENTION COORDINATION

The director shall establish a partnership with a national, human services-based volunteer organization to coordinate efforts to remedy and prevent homelessness among veterans in this State. The volunteer organization must have as its core programs addressing homelessness and veterans' services and have been active as a human services-based volunteer organization for a minimum of 30 years. The director may accept donations from outside sources and federal funding to accomplish the priorities of the partnership. If federal or outside funding is available, the priorities of this partnership, listed in order of priority, include, but are not limited to: [2011, c. 329, §1 (NEW).]

**1. Identification.** Identifying homeless veterans in the State;

[ 2011, c. 329, §1 (NEW) .]

**2. Outreach events.** Conducting annual outreach events, targeted to reach the maximum number of veterans in need, to disseminate information on resources and services available to assist homeless veterans; and

[ 2011, c. 329, §1 (NEW) .]

**3. Funding homes.** Identifying and securing temporary or permanent living space for veterans within the veterans' communities.

[ 2011, c. 329, §1 (NEW) .]

#### SECTION HISTORY

2011, c. 329, §1 (NEW).

## §514. COORDINATED VETERANS ASSISTANCE FUND; ESTABLISHMENT; REPORT

The Coordinated Veterans Assistance Fund, referred to in this section as "the fund," is established to provide financial assistance to veterans' service organizations. Beginning July 1, 2013 the director shall make distributions from the fund as follows: [2013, c. 128, §3 (NEW).]

**1. Transportation for medical needs of veterans.** Fifteen thousand dollars annually to a veterans' service organization that has maintained for the previous 5 years consecutively as of January 1, 2013 a program of providing transportation to veterans receiving medical services at the Veterans Administration Hospital at Togus or outreach centers of the veterans hospital;

[ 2013, c. 128, §3 (NEW) .]

**2. Veteran service officers at veterans hospital.** Sixty-four thousand five hundred dollars annually to each veterans' service organization that has funded and maintained a veteran service officer at the Veterans Administration Hospital at Togus for at least one year as of January 1, 2013. If revenues in the fund are insufficient to make the full amount of the distributions required by this subsection, the director shall divide the amount of available funds equally between the veterans' service organizations; and

[ 2013, c. 569, §6 (AMD) .]

**3. Other veterans programs.** The remainder of the funds, distributed by the director after payment of any fees applied by the State for administration of the fund, as follows:

A. Sixty-eight percent to the Maine Veterans Memorial Cemetery System Care Fund established by section 512, subsection 1; [2013, c. 128, §3 (NEW) .]

B. Twenty percent to organizations that coordinate an annual event to benefit homeless veterans by providing warm clothing and personal items; and [2013, c. 128, §3 (NEW) .]

C. Twelve percent to purchase flags for graves at veterans' cemeteries. [2013, c. 128, §3 (NEW) .]

[ 2013, c. 128, §3 (NEW) .]

Beginning in 2014, the director shall submit a report annually by February 15th regarding the distribution of these funds, including information from organizations that received the funds, to the joint standing committee of the Legislature having jurisdiction over veterans affairs. [2013, c. 128, §3 (NEW) .]

#### SECTION HISTORY

2013, c. 128, §3 (NEW). 2013, c. 569, §6 (AMD).

## §515. ADJUTANT GENERAL AS NEXT OF KIN

If the Adjutant General is next of kin to a veteran under Title 22, section 2843-A, the Adjutant General shall ensure that the veteran receives all benefits to which the veteran is entitled, including a grave marker or other death benefit from the United States Department of Veterans Affairs. [2015, c. 208, §3 (NEW) .]

#### SECTION HISTORY

2015, c. 208, §3 (NEW).

## Chapter 8: COMMISSION ON VIETNAM AND ATOMIC VETERANS

### §521. COMMISSION ESTABLISHED

*(REPEALED)*

SECTION HISTORY

1989, c. 547, §3 (NEW). 1993, c. 273, §3 (RP).

### §522. DEFINITIONS

*(REPEALED)*

SECTION HISTORY

1989, c. 547, §3 (NEW). 1993, c. 273, §3 (RP).

### §523. MEMBERSHIP

*(REPEALED)*

SECTION HISTORY

1989, c. 547, §3 (NEW). 1991, c. 626, §21 (AMD). 1993, c. 273, §3 (RP).

### §524. TERM OF OFFICE

*(REPEALED)*

SECTION HISTORY

1989, c. 547, §3 (NEW). 1993, c. 273, §3 (RP).

### §525. CHAIR

*(REPEALED)*

SECTION HISTORY

1989, c. 547, §3 (NEW). 1993, c. 273, §3 (RP).

### §526. COMPENSATION

*(REPEALED)*

SECTION HISTORY

1989, c. 547, §3 (NEW). 1993, c. 273, §3 (RP).

### §527. DUTIES

*(REPEALED)*

SECTION HISTORY

1989, c. 547, §3 (NEW). 1991, c. 626, §22 (AMD). 1993, c. 273, §3 (RP).

### §528. STAFF

*(REPEALED)*

SECTION HISTORY

1989, c. 547, §3 (NEW). 1991, c. 626, §23 (AMD). 1993, c. 273, §3 (RP).

## **Chapter 8-A: COMMISSION TO PROTECT THE LIVES AND HEALTH OF MEMBERS OF THE MAINE NATIONAL GUARD**

### **§531. DEFINITIONS**

*(REPEALED)*

SECTION HISTORY

2007, c. 318, §3 (NEW). 2011, c. 344, §34 (RP).

### **§532. COMMISSION TO PROTECT THE LIVES AND HEALTH OF MEMBERS OF THE MAINE NATIONAL GUARD; ESTABLISHED**

*(REPEALED)*

SECTION HISTORY

2007, c. 318, §3 (NEW). 2011, c. 344, §34 (RP).

### **§533. RESPONSIBILITIES OF THE COMMISSION**

*(REPEALED)*

SECTION HISTORY

2007, c. 318, §3 (NEW). 2011, c. 344, §34 (RP).

### **§534. MEETINGS OF THE COMMISSION; PUBLIC HEARING**

*(REPEALED)*

SECTION HISTORY

2007, c. 318, §3 (NEW). 2011, c. 344, §34 (RP).

### **§535. ASSISTANCE FROM STATE AGENCIES**

*(REPEALED)*

SECTION HISTORY

2007, c. 318, §3 (NEW). 2011, c. 344, §34 (RP).

### **§536. CASE REVIEW TEAM**

*(REPEALED)*

SECTION HISTORY

2009, c. 406, §12 (NEW). 2011, c. 344, §34 (RP).

## Chapter 9: MAINE VETERANS' SMALL BUSINESS LOAN ACT

### §551. TITLE

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

### §552. DEFINITIONS

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

### §553. MAINE VETERANS' SMALL BUSINESS LOAN AUTHORITY BOARD

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

### §554. MEMBERSHIP

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

### §555. MANAGER

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

### §556. BOARD POWERS

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

### §557. REIMBURSEMENT

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

### §558. MEMBERS PROHIBITED FROM CERTAIN ACTS

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).



**§559. MORTGAGES INSURED; CREDIT OF STATE PLEDGED**  
*(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§560. VETERANS' SMALL BUSINESS LOAN INSURANCE FUND**  
*(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§561. ADDITIONS TO FUND**  
*(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§562. INSURANCE OF LOANS**  
*(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§563. NONASSIGNABILITY OF PROCEEDS**  
*(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§564. LOAN INSURANCE PREMIUMS**  
*(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§565. DEFAULT**  
*(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§566. LOANS ELIGIBLE FOR INVESTMENT**  
*(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§567. LOANS WITH LITTLE OR NO COLLATERAL**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§568. ACTION TO SAFEGUARD THE FUND**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§569. ACCOUNTS**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§570. EXPENSES OF THE BOARD**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

**§571. RECORDS CONFIDENTIAL**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B16 (RP).

## Chapter 11: MAINE VETERANS' HOMES

### §601. HOMES ESTABLISHED; PURPOSE

There must be public homes for veterans in Maine known as "Maine Veterans' Homes" for the purpose of providing long-term care, support and related services to eligible veterans and family members of veterans. The Maine Veterans' Homes also are authorized to provide nonnursing facility care and services to Maine veterans if approved by appropriate state and federal authorities. The Maine Veterans' Homes are authorized to construct community-based outpatient clinics for Maine veterans in cooperation with the United States Department of Veterans Affairs and may construct and operate veterans hospice facilities, veterans housing facilities and other facilities authorized by the Board of Trustees of the Maine Veterans' Homes, using available funds. Any funds loaned to the Maine Veterans' Homes for operating purposes from the funded depreciation accounts of the Maine Veterans' Homes must be reimbursed from any funds received by the Maine Veterans' Homes and available for that purpose. The primary purpose of the Maine Veterans' Homes is to provide support and care for honorably discharged veterans who served on active duty in the United States Armed Forces or who served in the Reserves of the United States Armed Forces on active duty for other than training purposes. [2015, c. 397, §4 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1985, c. 773, §1 (RPR). 1989, c. 502, §A141 (AMD). 1991, c. 702, §1 (AMD). 1993, c. 426, §1 (AMD). 1993, c. 427, §10 (AMD). 1993, c. 680, §A34 (RPR). 1997, c. 98, §1 (AMD). 1997, c. 395, §P1 (AMD). 1999, c. 288, §1 (AMD). 2007, c. 167, §9 (AMD). 2009, c. 299, Pt. A, §9 (AMD). 2009, c. 406, §13 (AMD). 2009, c. 652, Pt. A, §59 (RPR). 2015, c. 397, §4 (AMD).

### §602. BODY CORPORATE; POWERS

The Maine Veterans' Homes is a body corporate. In addition to other powers granted by this chapter, the Maine Veterans' Homes may: [2015, c. 397, §5 (AMD).]

**1. Contracts.** Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;

[ 1983, c. 460, §3 (NEW) .]

**2. Acquire property.** Acquire, in the name of the homes, real or personal property or any interest therein, including rights or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise;

[ 2015, c. 397, §6 (AMD) .]

**3. Hold or dispose of property.** Hold, sell, assign, lease, rent, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or mortgage interest owned by it or in its control, custody or possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including threat of foreclosure;

[ 1983, c. 460, §3 (NEW) .]

**4. Procure insurance.** Procure insurance against any loss in connection with its property and other assets in amounts and from insurers which it deems desirable;

[ 1983, c. 460, §3 (NEW) .]

**5. Receive bequests and donations.** Receive, on behalf of the State, bequests and donations that may be made to improve the general comfort and welfare of the members of the homes or for the betterment of the homes;

[ 2015, c. 397, §7 (AMD) .]

**6. Borrow funds.** Borrow funds, not in excess of \$50,000,000 in the aggregate, make and issue bonds and negotiate notes and other evidences of indebtedness or obligations of the veterans' homes for prudent and reasonable capital, operational and maintenance purposes. The homes may secure payments of all or part of the obligations by pledge of part of the revenues or assets of the homes that are available for pledge and that may be lawfully pledged or by mortgage of part, or all, of any property owned by the homes. The homes may do all lawful things necessary and incidental to those powers. The homes may borrow money from the Federal Government and its agencies, from state agencies and from any other source. The homes may borrow money from the State subject to approval by the Treasurer of State and the Governor. Bonds, notes and other evidences of indebtedness issued under this subsection do not constitute debts of the State, nor a pledge of the credit of the State, but are payable solely from the funds of the homes; and

[ 2015, c. 397, §8 (AMD) .]

**7. Other acts.** Do other acts necessary or convenient to exercise the powers granted or reasonably implied in this section.

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1985, c. 773, §2 (AMD). 1991, c. 702, §2 (AMD). 2015, c. 397, §§5-8 (AMD).

## §602-A. DEVELOPMENT AND IMPLEMENTATION OF GERIATRIC TRAINING PROGRAMS

*(REPEALED)*

#### SECTION HISTORY

1987, c. 830, §2 (NEW). 2003, c. 689, §B6 (REV). 2015, c. 397, §9 (RP).

## §603. BOARD OF TRUSTEES

The administration of the homes is vested in the Board of Trustees of the Maine Veterans' Homes, as authorized by Title 5, section 12004-G, subsection 34. The board consists of 11 members, one of whom must be the Director of the Bureau of Maine Veterans' Services, ex officio, who serves without term. The Governor shall appoint the remaining trustees, who must be honorably discharged veterans. One member must be a woman. One member must be appointed from and represent each of the largest veterans' organizations, not exceeding 5, that are nationally chartered and have a department in Maine. The remaining members must be appointed at large and serve staggered 3-year terms. The membership must be distributed across the State so that approximately 1/3 reside in the southern part of the State, approximately 1/3 in the central part and approximately 1/3 in the northern part. In the event of a vacancy, a successor must be appointed to complete a member's unexpired term. Each trustee continues to hold office until a successor is appointed and qualified. [2015, c. 397, §10 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 812, §285 (AMD). 1985, c. 773, §3 (AMD). 1989, c. 503, §B172 (AMD). 1991, c. 626, §24 (AMD). 1997, c. 455, §30 (AMD). 2001, c. 676, §1 (AMD). 2015, c. 397, §10 (AMD).

## §604. CONDUCT OF BOARD BUSINESS

**1. Fiscal year.** The board shall adhere to the same fiscal year as the State.

[ 1983, c. 460, §3 (NEW) .]

**2. Meetings.** The board shall meet at least 6 times annually. Six members constitute a quorum.

[ 2001, c. 676, §2 (AMD) .]

**3. Selection of officers.** At its first annual meeting, which shall be held in July each year, the board shall elect a chairman and secretary for that fiscal year.

[ 1983, c. 460, §3 (NEW) .]

**4. Special meetings.** Special meetings may be called by agreement of a majority of the trustees.

[ 1983, c. 460, §3 (NEW) .]

**5. Appointment of chief executive officer.** The board shall appoint a chief executive officer in accordance with section 606.

[ 2015, c. 397, §11 (AMD) .]

**6. Other funds.** The board may apply for and receive any grants-in-aid for which the State or the homes may be eligible.

[ 2015, c. 397, §12 (AMD) .]

**7. Rules.** The board shall adopt rules necessary to administer the homes, to establish just charges for the maintenance of members and to oversee the operation of the homes. In adopting rules, the board shall seek comments and information from staff of the homes, members, members' families and other relevant sources, but the Maine Administrative Procedure Act provisions regarding rulemaking, Title 5, chapter 375, subchapters 2 and 2-A, do not apply.

[ 2015, c. 397, §12 (AMD) .]

**8. Assistance.** Every department and agency of the State, when requested, may furnish such assistance, counsel or advice as the board may require in the discharge of its duties.

[ 1987, c. 11, §2 (NEW) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 11, §2 (AMD). 2001, c. 676, §2 (AMD). 2015, c. 397, §§11, 12 (AMD).

## §605. COMPENSATION OF THE BOARD

Trustees shall be compensated according to the provisions of Title 5, chapter 379. [1983, c. 812, §286 (RPR) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 812, §286 (RPR).

## §606. CHIEF EXECUTIVE OFFICER

The chief executive officer must be an honorably discharged veteran who shall administer the homes in accordance with the rules, guidelines and general policies established by the board. The chief executive officer serves an indefinite term, but may be removed for cause by the board. The chief executive officer's salary is set by the board. The chief executive officer shall hire the necessary employees to operate the homes and, whenever possible, give preference in hiring to veterans. These employees are not deemed employees of the State. [2015, c. 397, §13 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1997, c. 147, §1 (AMD). 2015, c. 397, §13 (AMD).

## §607. ADMISSION

Veterans desiring admission to the homes must apply on forms prescribed by the chief executive officer. The chief executive officer shall grant admission only to veterans who were residents of Maine at the time of their entry into the United States Armed Forces or who are residents of Maine at the time of application, and to the spouses, widows or widowers of eligible veterans, as long as suitable facilities are available. Parents of armed services members who are killed in action or die as a consequence of wounds received in battle are also eligible, as so-called "gold star" parents, for admission. Admission must be granted when provisions of the rules governing private payment, Medicare and Medicaid eligibility to entitled persons are met. [2015, c. 397, §14 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §32 (AMD). 1995, c. 211, §1 (AMD). 1997, c. 395, §P2 (AMD). 2015, c. 397, §14 (AMD).

## §608. CHARGES

*(REPEALED)*

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2015, c. 397, §15 (RP).

## §609. CUSTODY OF FUNDS

*(REPEALED)*

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1997, c. 395, §P3 (RP).

## §610. SUPPORT AND MAINTENANCE FUND

All funds received by the Maine Veterans' Homes, including federal Veterans' Administration stipend funds, must be held in a permanent fund to be used as required by the chief executive officer for the support and maintenance of the homes. A percentage of these funds approved by the board of trustees must be placed in reserve for capital improvement expenditures. The board of trustees shall operate the homes, when constructed, as self-liquidating projects until all the bonds issued as provided by this chapter are retired. The Department of Health and Human Services may not modify its principles of reimbursement for long-term care facilities to specifically exclude reimbursement for the depreciation of the assets created with federal or state grants. [2015, c. 397, §16 (AMD).]

The provisions of this section pertaining to the Department of Human Services' reimbursement of long-term care facilities for depreciation of assets created with federal or state grants do not apply to renovations undertaken by the Maine Veterans' Homes 120-bed Augusta nursing facility in accordance with a certificate

of need application filed January 22, 2002. The Department of Health and Human Services shall amend its rules regarding reimbursement of long-term care facilities accordingly. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 3, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1997, c. 395, §P4 (AMD). 2003, c. 3, §1 (AMD). 2003, c. 689, §B6 (REV). 2015, c. 397, §16 (AMD).

### **§610-A. STIPEND FUNDS**

The Maine Veterans' Homes retain as direct income revenue any stipend funds they may receive from the federal Veterans' Administration for the homes' entire eligible resident population. [1997, c. 395, Pt. P, §5 (NEW).]

The Department of Health and Human Services may neither receive the proceeds nor require the application of stipend funds in the Medicare or Medicaid rate justification submissions by the Maine Veterans' Homes. [1997, c. 395, Pt. P, §5 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

#### SECTION HISTORY

1997, c. 395, §P5 (NEW). 2003, c. 689, §B6 (REV).

### **§610-B. USE OF STIPEND FUNDS**

*(REPEALED)*

#### SECTION HISTORY

1997, c. 395, §P6 (NEW). 1999, c. 288, §2 (AMD). 2003, c. 689, §B6 (REV). 2015, c. 397, §17 (RP).

### **§611. REPORTS**

The board shall submit an annual report to the Governor and the joint standing committee of the Legislature having jurisdiction over veterans affairs. This report must contain a copy of audited financial statements, statistics on members who resided in the homes during the year, recommendations to the Governor and Legislature and such other matters as the board deems pertinent. [2015, c. 397, §18 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2015, c. 397, §18 (AMD).

## Chapter 13: MAINE EMERGENCY MANAGEMENT AGENCY

### Subchapter 1: ORGANIZATION

#### §701. TITLE; PURPOSE

This chapter may be cited as the "Maine Emergency Management Act." It is the purpose of this chapter to: [2001, c. 614, §3 (AMD); 2001, c. 662, §72 (AMD).]

**1. Agency.** Establish the Maine Emergency Management Agency to lessen the effects of disaster on the lives and property of the people of the State through leadership, coordination and support in the 4 phases of emergency management: mitigation, preparedness, response and recovery;

[ 2001, c. 662, §72 (AMD) .]

**2. Local organizations.** Authorize the creation of local organizations for emergency management in the political subdivisions of the State;

[ 2001, c. 614, §4 (AMD); 2001, c. 662, §72 (AMD) .]

**3. Emergency powers.** Confer upon the Governor and the executive heads of governing bodies of the political subdivisions of the State certain emergency powers;

[ 2013, c. 146, §1 (AMD) .]

**4. Mutual aid.** Provide for the rendering of mutual aid among the political subdivisions of the State and with other states and provinces of Canada for the accomplishment of emergency management functions; and

[ 2013, c. 146, §2 (AMD); 2013, c. 146, §2 (AMD) .]

**5. Homeland security.** Authorize the Maine Emergency Management Agency to coordinate the State's homeland security-related preparedness, response, recovery, prevention and protection activities.

[ 2013, c. 146, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §14 (AMD). 2001, c. 614, §§3,4 (AMD). 2001, c. 662, §72 (AMD). 2003, c. 510, §A32 (AMD). 2013, c. 146, §§1-3 (AMD).

#### §702. POLICY

It is declared to be the policy of the State that all emergency management and homeland security functions be coordinated to the maximum extent with the comparable functions of the Federal Government, including its various departments and agencies, of other states and localities, and of private agencies so that the most effective preparation and use may be made of the nation's workforce, resources and facilities for dealing with any disaster that may occur. [2013, c. 146, §4 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §73 (AMD). 2013, c. 146, §4 (AMD).



## §703. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 460, §3 (NEW).]

### 1. Civil emergency preparedness.

[ 2001, c. 614, §5 (RP); 2001, c. 662, §74 (RP) .]

**2. Disaster.** "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, extreme public health emergency pursuant to Title 22, section 802, subsection 2-A, air contamination, blight, drought, critical material shortage, infestation, explosion, riot or hostile military or paramilitary action.

[ 2001, c. 694, Pt. B, §5 (AMD); 2005, c. 383, §24 (AFF) .]

**2-A. Emergency management.** "Emergency management" means the coordination and implementation of an organized effort to mitigate against, prepare for, respond to and recover from a disaster.

[ 2001, c. 614, §6 (NEW); 2001, c. 662, §74 (NEW) .]

**2-B. Emergency management forces.** "Emergency management forces" means persons engaged in performing emergency management activities, including, but not limited to, persons called out by the Governor pursuant to an emergency proclamation under section 742 or persons called out pursuant to section 784-A.

[ 2001, c. 614, §6 (NEW) .]

**2-C. Emergency management exercise.** "Emergency management exercise" means a focused practice activity that places participants in a simulated situation requiring them to function in the capacity that would be expected of them in a real event and is conducted to test an organization's plans and policies to evaluate an organization's capability to execute one or more portions of its response or contingency plans and to train personnel.

[ 2007, c. 167, §10 (NEW) .]

**2-D. Homeland security.** "Homeland security" means a concerted national effort to prevent and disrupt terrorist attacks, protect against man-made and natural hazards and respond to and recover from incidents that do occur.

[ 2013, c. 146, §5 (NEW) .]

**3. Local organization for emergency management.** "Local organization for emergency management" means an organization created in accordance with this chapter by state, county or local authority to perform local emergency management functions.

[ 2001, c. 614, §7 (AMD); 2001, c. 662, §74 (AMD) .]

**3-A. Mitigation.** "Mitigation" means those activities that actually eliminate or reduce the chance of occurrence or the effects of a disaster.

[ 2001, c. 662, §74 (NEW) .]

**4. Political subdivision.** "Political subdivision" means counties, cities, towns, villages, townships, districts, authorities and other public corporations and entities organized and existing under charter or general law.

[ 1983, c. 460, §3 (NEW) .]

**5. Preparedness.** "Preparedness" means planning how to respond in case an emergency or disaster occurs and working to increase resources available to respond effectively.

[ 2001, c. 662, §74 (NEW) .]

**6. Recovery.** "Recovery" means activities that, in the short term, return vital life support systems to minimum operating standards and, in the long term, redevelop a disaster area to preexisting conditions or to conditions that are less disaster prone and activities that assist families and businesses to return to a normal or improved state of being.

[ 2001, c. 662, §74 (NEW) .]

**7. Response.** "Response" means those activities designed to provide emergency assistance to victims of a disaster and reduce the likelihood of secondary damage.

[ 2001, c. 662, §74 (NEW) .]

**8. Terrorism.** "Terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure.

[ 2013, c. 146, §6 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1997, c. 580, §1 (AMD). 2001, c. 614, §§5-7 (AMD). 2001, c. 662, §74 (AMD). 2001, c. 694, §B5 (AMD). 2001, c. 694, §B6 (AFF). 2003, c. 366, §1 (AFF). 2005, c. 383, §24 (AFF). 2007, c. 167, §10 (AMD). 2013, c. 146, §§5, 6 (AMD).

## §704. DIRECTOR; DUTIES

The Maine Emergency Management Agency, as previously established and in this chapter called the "agency," is under the supervision of the Director of the Maine Emergency Management Agency, who in this chapter is called the "director." The director must be qualified by education, training or experience in managing emergencies or in the emergency management profession and is appointed by the Governor upon recommendation of the commissioner, subject to review by the joint standing committee of the Legislature having jurisdiction over the Department of Public Safety and confirmation by the Legislature. The director serves at the pleasure of the Governor. [2007, c. 3, §1 (AMD).]

The director may employ technical, administrative and operative assistants and other personnel, subject to the Civil Service Law, and make expenditures, with approval of the commissioner, that are necessary to carry out the purposes of this chapter. [2013, c. 146, §7 (AMD).]

The director, subject to the direction and control of the commissioner, is responsible administratively to the commissioner, retains direct access to the Governor in the case of an emergency and is responsible for notifying the Governor and the commissioner of all emergencies. The director is the executive head of the agency and is responsible for carrying out the program for emergency management. [2013, c. 146, §7 (AMD).]

The director shall: [ 2013, c. 146, §7 (NEW) . ]

**1. Emergency management; disaster response.** Represent the Governor in all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the State;

[ 2013, c. 146, §7 (NEW) . ]

**2. Coordination.** Coordinate the activities of all organizations for emergency management within the State;

[ 2013, c. 146, §7 (NEW) . ]

**3. Liaison.** Maintain liaison with and cooperate with emergency management and public safety agencies and organizations of other states, the Federal Government and foreign countries and their political subdivisions;

[ 2013, c. 146, §7 (NEW) . ]

**4. Local emergency management; assessment.** Prior to the annual meeting required in section 782, subsection 4, provide to each of the local emergency management organizations of the State an annual assessment of each organization's degree of emergency management capability and any other information pertinent to ensuring the public's welfare and safety within the local organization's jurisdiction;

[ 2013, c. 146, §7 (NEW) . ]

**5. Public safety radio frequencies; assessment.** Conduct periodic assessments at least once every 2 years of the use of public safety radio frequencies in emergency situations to ensure that first responders obtain sufficient training to understand and comply with adopted protocols and procedures;

[ 2013, c. 146, §7 (NEW) . ]

**6. Public education.** Develop and conduct an annual program of comprehensive public education, using all appropriate means of communication to educate and inform members of the public and public officials about emergency preparedness, response, recovery, prevention and mitigation. The program must incorporate the use of appropriate accessible formats to educate and inform individuals with disabilities, individuals who are elderly and non-English-speaking residents of the State;

[ 2013, c. 146, §7 (NEW) . ]

**7. Training program.** Develop and conduct an annual statewide program of emergency management training, including the assessment, development and implementation of appropriate training for state, county and local emergency management and response and support personnel, public officials and the public. The program must address all hazards and threats identified pursuant to section 783;

[ 2013, c. 146, §7 (NEW) . ]

**8. Exercises; evaluations; corrective actions.** Develop and conduct an annual statewide program of emergency management exercises, evaluations and corrective actions to test and improve the policies and plans of the state, county and local emergency management agencies. The program must address all hazards and threats identified pursuant to section 783;

[ 2013, c. 146, §7 (NEW) . ]

**9. Emergency operations center.** Maintain and operate a primary State Emergency Operations Center and designate an alternate State Emergency Operations Center pursuant to section 741, subsection 3, paragraph G-1;

[ 2013, c. 146, §7 (NEW) .]

**10. Risk assessment; emergency planning guidance.** Develop and disseminate risk assessment and emergency planning guidance in conformance with current federal requirements and national standards for use by the agency and county, regional and municipal jurisdictions;

[ 2013, c. 146, §7 (NEW) .]

**11. Comprehensive emergency management plan.** Develop and maintain a comprehensive emergency management plan for the State that is in conformance with guidance developed under subsection 10; and

[ 2013, c. 146, §7 (NEW) .]

**12. Additional duties and authority.** Carry out any additional duties and assume such additional authority as may be prescribed by the commissioner or the Governor.

[ 2013, c. 146, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B17 (AMD). 1985, c. 785, §B175 (AMD). 1987, c. 370, §15 (AMD). 1991, c. 376, §65 (AMD). 1997, c. 580, §2 (AMD). 2001, c. 614, §§8,9 (AMD). 2001, c. 662, §§75,76 (AMD). 2003, c. 510, §A33 (AMD). 2005, c. 634, §11 (AMD). 2007, c. 3, §1 (AMD). 2007, c. 167, §11 (AMD). 2013, c. 146, §7 (AMD).

## §705. RULES; APPEAL FROM ADMINISTRATIVE ACTION

The director shall adopt reasonable rules to carry out this chapter in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II. Those rules shall not become effective until approved in writing by the Governor. [1983, c. 460, §3 (NEW).]

Any person aggrieved by rule or an act or order of the director enforcing a rule may appeal by filing a complaint in the Superior Court within 30 days. The court may affirm or reverse the rule, act or order of the director and the decision of the court shall be final. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §706. CITIZENS' CIVIL EMERGENCY COMMISSION

*(REPEALED)*

#### SECTION HISTORY

1983, c. 816, §B9 (RAL). 1985, c. 737, §A106 (AMD). 1987, c. 402, §A194 (RP).

## §707. GRANTS AND GIFTS

The Maine Emergency Management Agency is authorized to accept gifts, grants and research funds and to undertake contractual relationships with the Federal Government, other state and provincial governments, counties, municipalities, corporations, foundations and other legal entities to carry out the purposes for which it was created, including, without limitation, conducting emergency planning activities related to nuclear power facilities in adjacent states or provinces. [1999, c. 174, §3 (NEW).]

### SECTION HISTORY

1999, c. 174, §3 (NEW).

## §708. HOMELAND SECURITY ADVISORY COUNCIL

The Homeland Security Advisory Council, as established in Title 5, section 12004-I, subsection 91 and referred to in this section as "the council," shall advise the Governor on the coordination of homeland security activities of state agencies and the most effective use of grant funds. [2005, c. 634, §12 (NEW).]

**1. Membership.** The council is composed of the following 9 members:

A. The director; [2005, c. 634, §12 (NEW).]

B. The Commissioner of Defense, Veterans and Emergency Management; [2005, c. 634, §12 (NEW).]

C. The Commissioner of Public Safety; [2005, c. 634, §12 (NEW).]

D. The Director of the Maine Center for Disease Control and Prevention within the Department of Health and Human Services; [2011, c. 529, §1 (AMD).]

E. The Chief of the State Police within the Department of Public Safety; [2011, c. 529, §1 (AMD).]

F. A representative of the Governor; [2011, c. 529, §1 (AMD).]

G. The Commissioner of Inland Fisheries and Wildlife or the commissioner's designee; [2011, c. 529, §1 (NEW).]

H. The Commissioner of Marine Resources or the commissioner's designee; and [2011, c. 529, §1 (NEW).]

I. The Commissioner of Agriculture, Conservation and Forestry or the commissioner's designee. [2011, c. 529, §1 (NEW); 2011, c. 657, Pt. W, §6 (REV).]

The director is the chair of the council. The Commissioner of Defense, Veterans and Emergency Management is the advisor of the council. Commissioner designees must be uniformed law enforcement personnel.

[2011, c. 529, §1 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

**2. Duties of council.** The council shall:

A. Advise the Governor with regard to the vulnerability of the State to terrorist activity; [2005, c. 634, §12 (NEW).]

B. Advise the Governor with regard to the adequacy of the plans to enhance homeland security; [2005, c. 634, §12 (NEW).]

C. Ensure that the homeland security activities of state agencies are coordinated; [2005, c. 634, §12 (NEW).]

D. Advise the Governor with regard to the implementation of state programs using federal funds and administration of federal grants for homeland security, in order to ensure coordination among agencies and the most effective use of grant funds; [2005, c. 634, §12 (NEW).]

E. Advise the Governor with regard to the appropriateness of the federal homeland security threat advisory level for the State, based upon intelligence gathered in the State and from federal sources; [2005, c. 634, §12 (NEW).]

F. Advise the Governor with regard to the appropriate response to any terrorist threat; [2007, c. 462, §2 (AMD).]

G. Periodically advise an emergency response team with pertinent information that could assist in the team's response to an event; and [2007, c. 462, §3 (AMD).]

H. Beginning January 15, 2008 and annually thereafter, report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding homeland security training and communications exercises and other homeland security initiatives and issues. [2007, c. 462, §4 (NEW).]

[2007, c. 462, §§2-4 (AMD).]

**3. Procedures.** The council shall meet:

A. At times and places as determined by the chair or the Governor and with assistance from state agencies as necessary and appropriate for the council's execution of its responsibilities as described in subsection 2; [2005, c. 634, §12 (NEW).]

B. Either in person or via telecommunication, as determined by the chair, immediately upon notification that the federal homeland security threat advisory level will be changed, in order to develop a recommendation to the Governor of the appropriate threat advisory level for the State and actions to be taken in the State; and [2005, c. 634, §12 (NEW).]

C. At the call of the chair or at the call of the Governor at any time the Governor requires the advice of the council. [2005, c. 634, §12 (NEW).]

The state response to any suspected terrorist event must be coordinated through the State Emergency Operations Center, in accordance with a state emergency operations plan as described in subsection 4, paragraph A. Meetings of the council are not public proceedings for purposes of Title 1, chapter 13, but may be open to the public at the discretion of the chair. Documents collected or produced by the council are not public records for the purposes of Title 1, chapter 13.

[2005, c. 634, §12 (NEW).]

**4. Resources and support.** The agency shall provide staff and administrative support to the council from existing resources. The agency is the coordinating agency within State Government for homeland security operational preparedness, response, recovery and mitigation. As the coordinating agency, the agency shall:

A. Develop and maintain a state emergency operations plan, which must incorporate by reference any internal operational plans developed by other state agencies for emergency response; [2005, c. 634, §12 (NEW).]

B. Coordinate the State Emergency Operations Center with the council; [2005, c. 634, §12 (NEW).]

C. Coordinate with other state agencies in the development of their emergency response plans; [2005, c. 634, §12 (NEW).]

D. Administer the review and approval of all grant applications developed by local and state agencies for homeland security funds; and [2005, c. 634, §12 (NEW).]

E. Administer homeland security grant funds. [2005, c. 634, §12 (NEW).]

[2005, c. 634, §12 (NEW).]

#### SECTION HISTORY

2005, c. 634, §12 (NEW). 2007, c. 462, §§2-4 (AMD). 2011, c. 529, §1 (AMD). 2011, c. 657, Pt. W, §6 (REV).

### §709. GOVERNOR'S HOMELAND SECURITY ADVISOR

The Commissioner of Defense, Veterans and Emergency Management serves as the Governor's homeland security advisor. [2013, c. 146, §8 (NEW).]

#### SECTION HISTORY

2013, c. 146, §8 (NEW).

## Subchapter 2: STATE EMERGENCY MANAGEMENT PROVISIONS

### §741. GOVERNOR'S POWERS

**1. Control during emergencies.** In the event of disaster beyond local control, the Governor may assume direct operational control over all or any part of the emergency management and public safety functions within the State.

[2003, c. 510, Pt. A, §34 (RPR).]

**2. Cooperation.** In performing the duties required by this chapter, the Governor shall, directly or through the commissioner, cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries and their political subdivisions and with private agencies in all matters pertaining to the emergency management capability of the State and of the Nation.

[2003, c. 510, Pt. A, §34 (RPR).]

**3. Authority.** In performing the duties required by this chapter, the Governor may:

A. Make, amend and rescind the necessary orders and rules to carry out this chapter within the limits of the authority conferred upon the Governor and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized emergency management or homeland security functions; [2013, c. 146, §9 (AMD).]

B. Prepare a comprehensive plan and program for the emergency management functions of this State. That plan and program must be integrated into and coordinated with the emergency management plans of federal agencies and with the plans of other states and foreign countries, and their political subdivisions, to the fullest possible extent; [2003, c. 510, Pt. A, §34 (RPR).]

C. Coordinate the preparation of plans and programs for emergency management functions by the political subdivisions of the State. These plans must be integrated into and coordinated with the emergency management plan and program of the State to the fullest possible extent; [2003, c. 510, Pt. A, §34 (RPR).]

D. In accordance with the plan and program for the emergency management functions of the State, and consistent with the emergency management and homeland security plans, programs and directives of the Federal Government, procure supplies and equipment, institute training programs and public information programs and take all other preparatory steps, including the partial or full mobilization of emergency

management organizations in advance of actual disaster or catastrophe, to ensure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need; [ 2013 , c. 146 , §10 (AMD) . ]

E. Conduct studies and surveys and take inventories of the industries, resources and facilities of the State necessary to ascertain the State's emergency management capabilities, and plan for their most efficient emergency use, including emergency economic controls to ensure adequate production and equitable distribution of essential commodities; [ 2003 , c. 510 , Pt. A , §34 (RPR) . ]

F. Whenever a shortage of critical material supplies appears imminent in the State, establish emergency reserves of those products necessary to ensure the health, welfare and safety of the people of the State. To establish those reserves, the Governor may purchase quantities of those materials for resale on a cost plus expenses basis for priority end users within the State; [ 2003 , c. 510 , Pt. A , §34 (RPR) . ]

G. On behalf of the State, enter into mutual aid arrangements with other states and foreign countries, and their political subdivisions, and coordinate mutual aid plans between political subdivisions of the State. If an arrangement is entered into with a jurisdiction that has enacted the Emergency Management Assistance Compact, chapter 16, or the International Emergency Management Assistance Compact, chapter 16-A, any resulting agreement or agreements may be considered supplemental agreements pursuant to those compacts. If the other jurisdiction or jurisdictions with which the Governor proposes to cooperate have not enacted one of those compacts, the Governor may negotiate special agreements with the jurisdiction or jurisdictions. Any agreement, if sufficient authority for its making does not otherwise exist, becomes effective only after approval by the Legislature; [ 2013 , c. 146 , §11 (AMD) . ]

G-1. Establish and ensure maintenance of a primary facility designated as the State Emergency Operations Center from which the emergency coordination of response to and recovery from a disaster may be effectively carried out and ensure the identification of an alternate site that may be used for this purpose if necessary; and [ 2013 , c. 146 , §12 (NEW) . ]

H. Delegate any authority vested in the Governor under this chapter and provide for the subdelegation of that authority. [ 2003 , c. 510 , Pt. A , §34 (RPR) . ]

[ 2009 , c. 252 , §1 (AMD) ; 2013 , c. 146 , §§9-12 (AMD) . ]

#### SECTION HISTORY

1983 , c. 460 , §3 (NEW) . 2001 , c. 614 , §11 (AMD) . 2001 , c. 662 , §78 (AMD) . 2003 , c. 510 , §A34 (RPR) . 2009 , c. 252 , §1 (AMD) . 2013 , c. 146 , §§9-12 (AMD) .

## §742. EMERGENCY PROCLAMATION

**1. Emergency proclamation.** Emergency proclamations must be issued as follows.

A. Whenever a disaster or civil emergency exists or appears imminent, the Governor shall, by oral proclamation, declare a state of emergency in the State or any section of the State. If the Governor is temporarily absent from the State or is otherwise unavailable, the next person in the State who would act as Governor if the office of the Governor were vacant may, by oral proclamation, declare the fact that a civil emergency exists or appears sufficiently imminent to activate emergency plans in any or all areas of the State. A written copy of the proclamation must be filed with the Secretary of State within 24 hours of the oral proclamation. [ 2001 , c. 353 , §4 (AMD) . ]

B. Subject at all times to the further direction and order of the Governor, an executive proclamation of emergency activates the emergency plans applicable to the affected areas and is the authority for the deployment and use of any forces or resources to which the plan or plans apply. [ 2001 , c. 353 , §4 (AMD) . ]



C. After the filing of the emergency proclamation and in addition to any other powers conferred by law, the Governor may:

- (1) Suspend the enforcement of any statute prescribing the procedures for conduct of state business, or the orders or rules of any state agency, if strict compliance with the provisions of the statute, order or rule would in any way prevent, hinder or delay necessary action in coping with the emergency;
- (2) Utilize all available resources of the State Government and of each political subdivision of the State as reasonably necessary to cope with the disaster emergency;
- (3) Transfer the direction, personnel or functions of state departments and agencies, or units thereof, for the purposes of performing or facilitating emergency services;
- (4) Authorize the obtaining and acquisition of property, supplies and materials pursuant to section 821;
- (5) Enlist the aid of any person to assist in the effort to control, put out or end the emergency or aid in the caring for the safety of persons;
- (6) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, if the Governor determines this action necessary for the preservation of life or other disaster mitigation, response or recovery;
- (7) Prescribe routes, modes of transportation and destinations in connection with evacuations;
- (8) Control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein;
- (9) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, explosives and combustibles;
- (10) Make provision for the availability and use of temporary emergency housing;
- (11) Order the termination, temporary or permanent, of any process, operation, machine or device which may be causing or is understood to be the cause of the state of emergency for which this proclamation was made; and
- (12) Take whatever action is necessary to abate, clean up or mitigate whatever danger may exist within the affected area. [ 2011 , c . 626 , §2 (AMD) . ]

[ 2011 , c . 626 , §2 (AMD) . ]

**2. Energy emergency proclamation.** Energy emergency proclamations must be issued as follows.

A. When an actual or impending acute shortage in energy resources threatens the health, safety or welfare of the citizens of the State, the Governor shall, by oral proclamation, declare that fact and that an energy emergency exists in the State or in any section of the State. A written copy of the proclamation must be filed with the Secretary of State within 24 hours of the oral proclamation. [ 2001 , c . 353 , §5 (AMD) . ]

B. Upon the issuance of an energy emergency proclamation and after consulting with the Governor's Energy Office, the Governor may exercise all the powers granted in this chapter, except as specifically limited by paragraph C. The powers of the Governor include, without limitation, the authority to:

- (1) Establish and implement programs, controls, standards, priorities and quotas for the allocation, conservation and consumption of energy resources;
- (2) Regulate the hours and days during which nonresidential buildings may be open and the temperatures at which they may be maintained;
- (3) Regulate the use of gasoline and diesel-powered land vehicles, watercraft and aircraft;

- (4) After consulting, when appropriate, with the New England governors and upon the recommendations of the Public Utilities Commission, regulate the generation, distribution and consumption of electricity;
- (5) Establish temporary state and local boards and agencies;
- (6) Establish and implement programs and agreements for the purposes of coordinating the emergency energy response of the State with those of the Federal Government and of other states and localities;
- (7) Temporarily suspend truck weight and size regulations, but not in conflict with federal regulations;
- (8) Regulate the storage, distribution and consumption of home heating oil; and
- (9) If the energy emergency was caused by a lack of electric grid reliability in this State resulting from insufficient capacity resources, take appropriate action, in consultation with the Public Utilities Commission, to procure sufficient capacity resources including generation capacity and interruptible, demand response or energy efficiency capacity resources. [2011, c. 655, Pt. MM, §19 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

C. In dealing with a declared energy emergency, the following powers granted by this chapter may not be invoked:

- (1) The eminent domain powers granted in section 821; and
- (2) The enforcement powers granted in sections 786 and 829, unless the Governor specifically invokes these powers by an order issued pursuant to an energy emergency proclamation and approved by a majority of the membership of the Legislative Council. That order must specify those emergency orders or rules that are enforceable pursuant to this paragraph and must further specify the enforcement activities emergency management organizations are to pursue. No enforcement action may be taken pursuant to this paragraph without publication of the order authorizing the action in a manner reasonably calculated to give affected persons adequate notice of the order or rule to be enforced, which may include publication on the Internet, and the sanctions to be applied. [2001, c. 353, §5 (AMD).]

D. During a declared energy emergency, the following provisions relating to environmental rules apply.

- (1) Except as provided in subparagraph (2), this subsection may not be construed to authorize the Governor to suspend or to modify orders, rules, standards or classifications issued or enforced by the Department of Environmental Protection or the Maine Land Use Planning Commission.
- (2) When an energy emergency proclamation is in effect, the Governor may call the Board of Environmental Protection into extraordinary session to consider temporary waivers or suspensions of rules and standards related to air and water quality necessary to relieve then existing energy shortages. At an extraordinary session, the board is empowered, notwithstanding any other provision of law, to approve suspensions or waivers that it determines are necessary to relieve or avoid an energy shortage and will not result in environmental degradation of a permanent or enduring nature. In no event may any suspension or modification be granted that will result in a circumvention of Title 38, sections 481 to 488, 541 and 557. The waiver or suspension may not remain in effect longer than 60 days or after the date on which the board renders a further order issued pursuant to the regular procedures specified in Title 38, whichever first occurs. [2001, c. 353, §5 (AMD); 2011, c. 682, §38 (REV).]

E. The Superior Court of the county in which a person fails to obey an order or rule promulgated in accordance with this subsection has jurisdiction to issue a restraining order or injunction to enforce the order or rule. That proceeding must be held in accordance with the Maine Rules of Civil Procedure, Rule 65. [2001, c. 353, §5 (AMD).]

F. In the event that an order or rule issued by the Governor, pursuant to the powers granted in paragraph B, are to be in effect for longer than 90 days, the Governor shall, before the 80th day following the issuance of the order or rule, convene the Legislature. [1983, c. 460, §3 (NEW).]

[ 2011, c. 655, Pt. MM, §19 (AMD); 2011, c. 655, Pt. MM, §26 (AFF);  
2011, c. 682, §38 (REV) .]

**3. Oil spill emergency proclamation.** In the event of a disaster due to an oil spill in coastal waters, the Commissioner of Environmental Protection shall directly represent the Governor in all direct abatement, clean-up and resource protection activities in coordination with federal, industry and other states' response teams. The agency shall assume the other functions prescribed in subsection 1, paragraph C, but does not have supervisory authority over the Department of Environmental Protection in the conduct of response activities on the water.

[ 1991, c. 454, §1 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §33 (AMD). 1987, c. 429, (AMD).  
1987, c. 810, §§6,11 (AMD). 1991, c. 454, §1 (AMD). 2001, c. 353, §§4,5  
(AMD). 2005, c. 677, §C2 (AMD). 2011, c. 626, §2 (AMD). 2011, c. 655,  
Pt. MM, §19 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 682, §38  
(REV).

## §743. TERMINATION OF EMERGENCY

**1. Proclamation by Governor.** Whenever the Governor is satisfied that a disaster or civil emergency no longer exists, he shall terminate the emergency proclamation by another proclamation affecting the sections of the State covered by the original proclamation, or any part thereof. That proclamation shall be published in newspapers of the State and posted in places which the Governor deems appropriate.

[ 1983, c. 594, §34 (NEW) .]

**2. Limitation.** No state of emergency may continue for longer than 30 days unless renewed by the Governor. The Legislature, by joint resolution, may terminate a state of emergency at anytime. Thereupon, the Governor shall issue an executive proclamation ending the state of emergency.

[ 1983, c. 594, §34 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §34 (RPR).

## §744. DISASTER RELIEF

**1. Financial assistance to individuals.** Whenever the President has declared a major disaster to exist in this State, the Governor may:

A. Accept a grant of financial assistance from the Federal Government, subject to such terms and conditions as may be imposed upon the grant and upon his determination that financial assistance is essential to meet necessary expenses or serious needs of individuals or families caused by the disaster which cannot otherwise adequately be met; [1983, c. 460, §3 (NEW).]

B. Enter into an agreement with the Federal Government, or any officer or agency thereof, pledging the State to participate in up to 25% of the financial assistance authorized in this subsection. If state funds are not otherwise available, the Governor may accept an advance of the state's share from the Federal Government to be repaid when the State is able to do so; and [1983, c. 460, §3 (NEW).]

C. Notwithstanding any other provision of law or regulation, make financial grants to meet necessary expenses or serious needs of individuals or families caused by the disaster that cannot otherwise adequately be met. A grant to an individual or family may not exceed in the aggregate for any single major disaster declared by the President the amount established by the Federal Government for the limit on grants to individuals under any federal disaster assistance program for individuals and families. [2003, c. 404, §8 (AMD).]

[ 2003, c. 404, §8 (AMD) .]

## 2. Community disaster loans.

[ 1985, c. 794, Pt. A, §4 (RP) .]

**2-A. Assistance to local governmental units.** Assistance to local governmental units shall be governed as follows.

A. Whenever the President of the United States declares that a major disaster exists in the State, the Governor may:

- (1) Apply for a public assistance grant from the Federal Government under Public Law 93-288 on behalf of both the State and local governmental units for the purposes of repairing or replacing publicly owned facilities within the disaster area or relocating public facilities outside of the disaster area;
- (2) Obligate state financial resources, as a condition for receiving such a federal grant, up to, but not in excess of, 25% of the total public assistance requested; and
- (3) Enter into an agreement with the affected local governmental units to obligate local financial resources up to, but not in excess of, 10% of the total cost of damage to local public facilities, provided that the local share shall not exceed 10% of total local annual operating budget, exclusive of educational budgets. [1985, c. 794, Pt. A, §5 (NEW) .]

B. If the President of the United States declares that a major disaster exists in the State, the Governor may:

- (1) Apply for a loan from the Federal Government on behalf of a unit of local government if he determines that the unit will suffer a substantial loss of tax and other revenues as a result of a major disaster and has demonstrated a need for financial assistance to perform its governmental functions;
- (2) Receive and disburse the proceeds of any approved loan to an applicant local government;
- (3) Determine the amount needed by any applicant local government to restore or resume its governmental functions and certify the amount to the Federal Government, provided that no application amount may exceed 25% of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs; and
- (4) Recommend to the Federal Government, based upon his review, the cancellation of all or any part of repayment when, after 3 full fiscal years following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional municipal expenses related to the disaster. [1985, c. 794, Pt. A, §5 (NEW) .]

[ 1985, c. 794, Pt. A, §5 (NEW) .]

## 3. Temporary housing.

Temporary housing may be provided as follows.

A. Whenever the Governor has proclaimed a disaster emergency under the laws of this State, or the President has declared an emergency or a major disaster to exist in this State, the Governor may:

- (1) Enter into purchase, lease or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and make these units available to any political subdivision of the State;

(2) Assist any political subdivision of the State, in which is located temporary housing for disaster victims, acquire sites necessary for the temporary housing and do all things required to prepare the sites to accommodate temporary housing units. This may be accomplished by advancing or lending funds available to the Governor from any appropriation made by the Legislature or from any other source, and "passing through" funds made available by any agency, public or private; or by becoming a partner with the political subdivision for the execution and performance of any temporary housing project for disaster victims. For those purposes, the Governor may pledge the credit of the State on terms which he deems appropriate, having due regard for current debt transactions of the State; and

(3) Suspend or modify a state health, safety, zoning, transportation or other requirement of law or rule when he deems suspension or modification necessary to provide temporary housing for disaster victims. That suspension or modification shall be in accordance with rules adopted by the Governor and shall not exceed 60 days' duration. [1983, c. 460, §3 (NEW).]

B. Any political subdivision of this State is expressly authorized to acquire, temporarily or permanently, by purchase, lease or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip those sites to accommodate the housing units. [1983, c. 460, §3 (NEW).]

[ 1983, c. 460, §3 (NEW) . ]

**4. Debris removal in major disasters.** In major disasters, debris may be removed as follows.

A. Whenever the Governor has declared a disaster emergency to exist under the laws of this State, or the President has declared a major disaster or emergency to exist in this State, the Governor may:

(1) Notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, clear or remove from publicly-owned or privately-owned land or water, debris and wreckage that may threaten public health or safety, or public or private property;

(2) Accept funds from the Federal Government and utilize those funds to make grants to any local government for the purpose of removing debris or wreckage from publicly-owned or privately-owned land or water; and

(3) Notwithstanding any other provision of law, agree to indemnify the Federal Government against any claim arising from debris and wreckage removal from private property. [2003, c. 404, §9 (AMD) . ]

B. The following conditions apply to the execution of removal or clearance.

(1) Authority under this subsection shall not be exercised unless the affected local government, corporation, organization or individual first presents an unconditional authorization for removal of the debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, also first agrees to indemnify the State Government against any claim arising from that removal.

(2) Whenever the Governor provides for clearance of debris or wreckage pursuant to paragraph A, employees of the designated state agencies or individuals appointed by the State are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

(3) Except in cases of willful misconduct, gross negligence or bad faith, any state employee or agent complying with orders of the Governor and performing duties pursuant thereto under this section shall not be liable for death of or injury to persons or damage to property occurring during performance of those duties. [1983, c. 460, §3 (NEW) . ]

[ 2003, c. 404, §9 (AMD) . ]

**5. Terms.** As used in this section, "major disaster," "emergency" and "temporary housing" have the same meaning as in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended.

[ 2001, c. 662, §80 (AMD) . ]

**6. Rules.** The Governor shall make rules necessary for carrying out this section, including, but not limited to, standards of eligibility for persons applying for benefits; procedures for applying for and administration of relief; methods of investigation, filing and approving applications and formation of local or statewide boards to pass upon applications and procedures for appeals.

[ 1983, c. 460, §3 (NEW) . ]

**7. Authority not limited.** Nothing contained in this section may be construed to limit the Governor's authority to apply for, administer and expend any grants, gifts or payments in aid of disaster prevention, preparedness, response or recovery.

[ 1983, c. 460, §3 (NEW) . ]

**8. Penalty.** Any person who knowingly makes a misstatement of fact in connection with an application for financial assistance under this section is guilty of a Class D crime.

[ 1983, c. 460, §3 (NEW) . ]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1985, c. 794, §§A4,5 (AMD). 2001, c. 662, §§79,80 (AMD). 2003, c. 404, §§8,9 (AMD).

## §745. DISASTER RECOVERY FUND

**1. Fund established.** There is established the Disaster Recovery Fund, referred to in this section as "the fund," to be administered by the agency.

[ 2013, c. 146, §13 (AMD) . ]

**2. Sources of fund.** The following must be paid into the fund:

A. All money appropriated for inclusion in the fund; [2005, c. 439, §1 (NEW).]

B. All interest from investment of the fund; [2009, c. 252, §2 (AMD).]

C. Any other money deposited in the fund from the Department of Defense, Veterans and Emergency Management, Disaster Assistance Relief, Other Special Revenue Funds account; and [2009, c. 252, §2 (AMD).]

D. Reimbursement received from the Federal Government or other legal entity for disaster recovery assistance expenditures made from the fund. [2013, c. 146, §13 (AMD).]

[ 2013, c. 146, §13 (AMD) . ]

**3. Use of fund.** The fund must be the first resource used when section 742 or 744 is invoked. The fund may be used for any of the following at the discretion of the Governor or Governor's designee:

A. To provide disaster recovery assistance to individuals and families when a federal disaster declaration is not received; [2013, c. 146, §13 (AMD).]

B. To provide disaster recovery assistance to local governmental units of the State for infrastructure repair and response when a federal disaster declaration is not received; [2013, c. 146, §13 (AMD).]

C. Emergency response costs for state agencies; [2009, c. 252, §3 (NEW).]

D. To provide low-interest loans to businesses for disaster recovery assistance when a federal disaster declaration is not received; [2013, c. 146, §13 (AMD).]

E. Disaster-related unmet needs of individuals and families following a federally declared disaster; [2009, c. 252, §3 (NEW).]

F. Matching funds for assistance to individuals in a federally declared disaster; and [2009, c. 252, §3 (NEW).]

G. Matching funds for assistance to state and local governmental units in a federally declared disaster. [2009, c. 252, §3 (NEW).]

[2013, c. 146, §13 (AMD).]

**4. Fund balance.** The fund's balance may not exceed \$3,000,000, except by order of the Governor. In the absence of such an order, any amount, including interest, that accrues in excess of \$3,000,000 must be transferred by the State Controller to the Maine Budget Stabilization Fund, established in Title 5, section 1532. Beginning July 1, 2010, the fund's maximum allowable balance must be adjusted annually on July 1st by any percentage change in the Consumer Price Index from January 1st to December 31st of the previous year, but only to a maximum increase of 2%.

[2009, c. 252, §4 (AMD).]

**5. Annual report.** The director shall submit a written report by January 15, 2007 and annually thereafter to the Governor and the Legislature on the fund's balance and expenditures.

[2005, c. 634, §13 (NEW).]

**6. Rules.** The agency shall adopt rules governing the process for the expenditure of funds from the fund. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 462, §5 (NEW).]

#### SECTION HISTORY

2005, c. 439, §1 (NEW). 2005, c. 634, §13 (AMD). 2007, c. 462, §5 (AMD). 2009, c. 252, §§2-4 (AMD). 2013, c. 146, §13 (AMD).

### Subchapter 3: LOCAL EMERGENCY MANAGEMENT PROGRAMS

#### §781. MUNICIPAL, COUNTY AND REGIONAL AGENCIES

**1. Municipal or interjurisdictional agencies.** Each municipality of the State must be served by a municipal or interjurisdictional agency responsible for emergency management.

A. [2003, c. 510, Pt. C, §14 (RP).]

B. [2003, c. 510, Pt. C, §14 (RP).]

C. [2003, c. 510, Pt. C, §14 (RP).]

[2003, c. 510, Pt. C, §14 (RPR).]

**2. County or regional agencies.** Each county shall maintain a county emergency management agency or create regional emergency management agencies that serve the member counties. Each county or regional agency is responsible for coordination of the activities of municipal and interjurisdictional emergency management agencies within the region or county and for emergency management in the unorganized territories within its jurisdiction. A county or regional emergency management agency must receive support from the municipalities within its jurisdiction.

[ 2003, c. 510, Pt. C, §14 (RPR) .]

**3. Structure of county and regional agencies.** The director shall advise upon the organizational structure of county and regional emergency management agencies, including the manner in which the directors of those agencies are appointed by governing bodies of the jurisdictions involved.

[ 2003, c. 510, Pt. C, §14 (RPR) .]

**4. List of agencies.** The agency shall publish and maintain a current list of municipal, interjurisdictional, county and regional emergency management agencies established pursuant to this section.

[ 2003, c. 510, Pt. C, §14 (RPR) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §16 (AMD). 2001, c. 614, §13 (AMD). 2001, c. 662, §82 (AMD). 2003, c. 510, §C14 (RPR).

## §782. AGENCY DIRECTORS

A director must be appointed for each municipal and county or regional emergency management agency. A director of an emergency management agency may not be at the same time an executive officer or member of the executive body of a municipality or interjurisdictional or county or regional agency of the State or a county commissioner. Notwithstanding this section or any other law, a town manager or administrative assistant may also be appointed to serve as the director of an emergency management agency. A director may be removed by the appointing authority for cause. [2003, c. 510, Pt. A, §35 (RPR).]

**1. Municipal emergency management director.** The municipal officers shall appoint the director of the municipality's emergency management agency. In each municipality that has not established an agency of its own, the municipal officers shall designate an emergency management director to facilitate cooperation in the work of disaster mitigation, preparedness, response and recovery. The emergency management director shall serve as liaison to the appropriate county or regional agency.

[ 2003, c. 510, Pt. A, §35 (RPR) .]

**2. County agency director.** The county commissioners shall appoint the director of that county's emergency management agency.

[ 2003, c. 510, Pt. A, §35 (RPR) .]

**3. Interjurisdictional and regional agency directors.** The director of an interjurisdictional or regional emergency management agency must be appointed in the manner prescribed by the director in accordance with section 781, subsection 3.

[ 2003, c. 510, Pt. A, §35 (RPR) .]



**4. Annual meeting with Director of the Maine Emergency Management Agency.** The director of each county or regional organization for emergency management in the State and the respective appointing authority shall meet each year with the Director of the Maine Emergency Management Agency or the agency's successor, in order to review the performance of the county or regional emergency management organization in carrying out its federal and state mandate and to jointly set new goals for the coming year.

[ 2003, c. 510, Pt. A, §35 (RPR) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 582, §B6 (AMD). 1991, c. 324, §§1,2 (AMD). 1991, c. 376, §66 (AMD). 2001, c. 614, §14 (AMD). 2001, c. 662, §83 (AMD). 2003, c. 510, §A35 (RPR).

## §783. DISASTER EMERGENCY PLAN

Each municipality, county and regional emergency management agency shall prepare and keep a current disaster emergency plan for the area subject to its jurisdiction. The plan must be approved by the jurisdiction's governing body. The plan must follow the risk assessment and planning guidance provided by the director under section 704, subsection 10 and address the hazards and threats that pose the greatest risk to the jurisdiction and the capabilities and actions needed to respond to and recover from disasters. [ 2013, c. 146, §14 (AMD) .]

### 1. Identification of disasters.

[ 2013, c. 146, §14 (RP) .]

### 2. Action to minimize damage.

[ 2013, c. 146, §14 (RP) .]

### 3. Personnel, equipment and supplies.

[ 2013, c. 146, §14 (RP) .]

### 4. Recommendations.

[ 2013, c. 146, §14 (RP) .]

### 5. Other.

[ 2013, c. 146, §14 (RP) .]

Each municipal, county and regional emergency management agency, as part of the development of a disaster emergency plan for the area subject to its jurisdiction, shall consult as it considers appropriate with institutions, organizations and businesses within its jurisdiction to ensure that the disaster plans developed by the municipality or agency and those institutions, organizations and businesses are compatible. Institutions, organizations and businesses with which the municipality or agency may consult include, but are not limited to, hospitals, schools, health care facilities, group homes and day care centers. [ 2013, c. 146, §14 (AMD) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §§17,18 (AMD). 2001, c. 614, §§15,16 (AMD). 2001, c. 662, §§84,85 (AMD). 2003, c. 404, §10 (AMD). 2003, c. 510, §A36 (AMD). 2013, c. 146, §14 (AMD).

## §784. MUTUAL AID ARRANGEMENTS

The director of each local organization for emergency management shall, in collaboration with other public and private agencies within the State, develop or cause to be developed mutual aid arrangements for reciprocal emergency management aid and assistance in case of a disaster too great to be dealt with unassisted. These arrangements must be consistent with the state emergency management program, and in time of emergency each local organization for emergency management shall render assistance in accordance with the mutual aid arrangements. For this purpose, political subdivisions are authorized when geographical locations make mutual aid arrangements desirable to enter into mutual aid arrangements subject to the approval of the director. [2003, c. 510, Pt. A, §37 (RPR).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §17 (AMD). 2001, c. 662, §86 (AMD). 2003, c. 510, §A37 (RPR).

## §784-A. RIGHT TO CALL FOR AND EMPLOY ASSISTANCE

The Maine Emergency Management Agency and local organizations for emergency management may employ any person considered necessary to assist with emergency management activities. All persons called and employed for assistance shall proceed as directed by the Maine Emergency Management Agency or the local organization. Any person called and employed for assistance either within the State or in another state under chapter 16 or in a Canadian province under chapter 16-A is deemed to be an employee of the State for purposes of immunity from liability pursuant to sections 822, 926 and 940 and for purposes of workers' compensation insurance pursuant to sections 823, 928 and 942, except for persons excluded from the definition of employee pursuant to Title 39-A, section 102, subsection 11. A person holding a professional license in the State may be designated a member of the emergency management forces in that professional capacity only after the individual or the license issuer provides confirmation of a valid license. [2013, c. 146, §15 (AMD).]

### SECTION HISTORY

2001, c. 614, §18 (NEW). 2005, c. 630, §2 (AMD). 2013, c. 146, §15 (AMD).

## §784-B. MAINE FIRST RESPONDERS STATE-WIDE MUTUAL AID AGREEMENT

All political subdivisions within the State are covered by the Maine First Responders State-wide Mutual Aid Agreement, dated November 2008, as drafted by the agency and referred to in this section as "the agreement," except that a political subdivision may withdraw from the agreement by enacting a local ordinance that withdraws from the agreement. [2009, c. 175, §1 (NEW).]

A local first responder agency may provide emergency management, fire, law enforcement, emergency medical, public works and other emergency services as necessary upon the request of any political subdivision within the State in accordance with the agreement. Additional preexisting contracts or agreements with the jurisdiction requesting the services are not required. [2009, c. 175, §1 (NEW).]

### SECTION HISTORY

2009, c. 175, §1 (NEW).

## §785. STATE CIVIL SERVICE APPEALS BOARD SERVICES

Local emergency management agencies organized pursuant to this subchapter may accept the services of the Bureau of Human Resources and adopt board rules for the purpose of qualifying for federal funds. The Bureau of Human Resources may enter into agreements with the emergency management agencies for the purpose of furnishing merit system coverage for emergency management employees or employees of

other agencies and departments assigned full time to emergency management duties. The Bureau of Human Resources may charge for services rendered. The fee must be consistent with the cost of coverage per state employee multiplied by the number of local, interjurisdictional, county or regional employees covered. Fees received by the board must be credited to the General Fund. [2001, c. 614, §19 (AMD); 2001, c. 662, §87 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1985, c. 785, §B176 (AMD). 2001, c. 614, §19 (AMD). 2001, c. 662, §87 (AMD).

## §786. ENFORCEMENT

**1. Law enforcement officers.** Duly appointed law enforcement officers of local, state and sheriffs' organizations are empowered to enforce any of the provisions of this chapter or any rules promulgated thereunder in times of an emergency or during authorized alerts, including partial or full mobilization necessary to carry out section 742. Failure to comply with any just or reasonable order relative to enforcement from a duly appointed law enforcement officer is a Class E crime.

[ 1983, c. 460, §3 (NEW) .]

**2. Arrest powers.** Duly appointed law enforcement officers of local, state and sheriffs' organizations shall have the power to arrest persons found in violation of any provision of this chapter or any rules promulgated in times of emergency to carry out section 742.

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

## Subchapter 3-A: COORDINATION AND ADMINISTRATION OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

## §791. GENERAL PROVISIONS

**1. Purpose.** This subchapter is intended to be consistent with and facilitate implementation of the provisions of the United States Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499.

[ 1989, c. 464, §3 (NEW) .]

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

A. "CERCLA hazardous substance" means a substance on the list defined in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, Section 101(14), as amended. [1989, c. 464, §3 (NEW) .]

B. "Extremely hazardous substance" shall have the meaning set forth in the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 302, and listed in 40 Code of Federal Regulations, Part 355. [1989, c. 464, §3 (NEW) .]

B-1. "Facility" means all buildings, equipment, structures, rail makeup, holding or storage tracks, spurs or yards, truck parking areas, airports, loading docks and other stationary items that are located on a single site or on contiguous or adjacent sites and are owned or operated by the same person or by another

person who controls, is controlled by, or is under common control with that person. "Facility" includes sites where motor vehicles, watercraft, rolling stock and aircraft are present for more than 12 hours. [1989, c. 638, §1 (NEW).]

C. "Hazardous chemical" means all hazardous chemicals as defined under 40 Code of Federal Regulations, Part 355.20. [1989, c. 464, §3 (NEW).]

D. "Hazardous material" means all chemicals and chemical categories defined as extremely hazardous substances and hazardous chemicals in 40 Code of Federal Regulations, Part 355.20 and toxic chemicals in 40 Code of Federal Regulations, Part 372.3. [1989, c. 464, §3 (NEW).]

E. "Reportable quantity" means for any CERCLA hazardous substance or extremely hazardous substance, the reportable quantity established in 40 Code of Federal Regulations, Part 302, Table 302.4 or in 40 Code of Federal Regulations, Part 355, Appendixes A and B, for such substance. [1989, c. 464, §3 (NEW).]

F. "Threshold planning quantity" shall have the meaning set forth in the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 302, and listed in 40 Code of Federal Regulations, Parts 355, 370 and 372. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW); 1989, c. 638, §1 (AMD) .]

#### SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 638, §1 (AMD).

## §792. STATE EMERGENCY RESPONSE COMMISSION

**1. Composition and terms.** The State Emergency Response Commission, referred to in this subchapter as the "commission," as established by Title 5, section 12004-G, subsection 13-A, to implement effective emergency response to releases of hazardous chemicals. The commission is composed of 14 members as follows:

A. The Commissioner of Environmental Protection or the commissioner's permanent designee; [1989, c. 464, §3 (NEW).]

B. The Commissioner of Health and Human Services or the commissioner's permanent designee; [1989, c. 464, §3 (NEW); 2003, c. 689, Pt. B, §7 (REV).]

C. The Director of Maine Emergency Medical Services, Department of Public Safety, or the director's permanent designee; [1995, c. 2, §96 (COR).]

D. The Commissioner of Labor or the commissioner's permanent designee; [1989, c. 464, §3 (NEW).]

E. The Commissioner of Transportation or the commissioner's permanent designee; [1989, c. 464, §3 (NEW).]

F. The Director of the Maine Emergency Management Agency, who shall serve as chair; [1989, c. 464, §3 (NEW).]

G. The Chief of the State Police or the chief's permanent designee; [1989, c. 464, §3 (NEW).]

H. A representative, appointed by the Governor, of municipal government; [1989, c. 464, §3 (NEW).]

I. A representative, appointed by the Governor, of the Maine Fire Chiefs' Association; [1989, c. 464, §3 (NEW).]

J. A representative, appointed by the Governor, of a professional firefighters' union; [1989, c. 464, §3 (NEW).]

K. A representative, appointed by the Governor, of private commerce and industry; [1989, c. 464, §3 (NEW).]

L. A representative, appointed by the Speaker of the House of Representatives, of volunteer firefighters; [1989, c. 464, §3 (NEW).]

M. A representative, appointed by the President of the Senate, of an environmental organization representative of the general public; and [1989, c. 464, §3 (NEW).]

N. A representative, appointed by the Speaker of the House of Representatives, of organized labor. [1989, c. 464, §3 (NEW).]

The Governor and legislative leadership shall request a list of 3 names from organizations covered under paragraphs H to N from which to make final appointments. All appointed members shall serve for a term of 4 years from the date appointed. Appointed members shall serve the following initial terms: one member for 1 year, 2 members for 2 years, 2 members for 3 years and 2 members for 4 years. Appointed members shall be allowed to serve for 2 consecutive terms.

[1995, c. 2, §96 (COR); 2003, c. 689, Pt. B, §7 (REV).]

**2. Powers and duties.** The general duties of the commission are to oversee the implementation of a comprehensive program of planning and training for effective emergency response to releases of hazardous materials. Specifically, the commission shall:

A. Advise the director on rules promulgated under this subchapter; [1989, c. 464, §3 (NEW).]

B. Designate emergency planning districts to facilitate implementation of emergency response plans; [1989, c. 464, §3 (NEW).]

C. Provide for the necessary appointment of local emergency planning committees; [1989, c. 464, §3 (NEW).]

D. Supervise and coordinate local emergency planning committee activities; [1989, c. 464, §3 (NEW).]

E. Review emergency response plans developed by the committees; [1989, c. 464, §3 (NEW).]

F. Receive chemical spill notifications required pursuant to state law and the provisions of the United States Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499; [1989, c. 464, §3 (NEW).]

G. Provide the public with information upon request, consistent with the provisions of state and federal law, on emergency response plans, potential chemical hazards and safety; [1989, c. 464, §3 (NEW).]

H. Rule on trade secrets in cooperation with the United States Environmental Protection Agency; [1989, c. 464, §3 (NEW).]

I. Monitor, observe, participate in and review certain emergency drills and exercises; [1989, c. 464, §3 (NEW).]

J. Review and monitor hazardous materials training programs in the State; [1989, c. 464, §3 (NEW).]

K. Conduct joint emergency operations from the State Emergency Operations Center; and [1989, c. 464, §3 (NEW).]

L. Undertake any other actions necessary to accomplish the purposes of this subchapter. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW).]

**3. Voting.** All votes require a quorum with at least 8 members present.

[ 1989, c. 464, §3 (NEW) .]

#### SECTION HISTORY

1989, c. 464, §3 (NEW). RR 1995, c. 2, §96 (COR). 2003, c. 689, §B7 (REV).

## §793. LOCAL EMERGENCY PLANNING COMMITTEES

There are established local emergency planning committees, referred to in this subchapter as "committees" for each emergency planning district designated by the commission pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499. [1989, c. 464, §3 (NEW) .]

**1. Local committees established.** The commission shall, by resolution, appoint the members of the local emergency planning committee of each emergency planning district. The committee consists of at least 14 members and, except as provided in subsection 2, includes representatives from each of the following organizations or groups: elected state and local officials; law enforcement, emergency management, firefighting, first aid, health, local environmental, hospital and transportation personnel; broadcast and print media; citizens living near local facilities; employees working in local facilities; community groups; and owners and operators of facilities subject to the emergency planning requirement of this subchapter.

[ 2013, c. 462, §10 (AMD) .]

**2. Modification of committees.** Members of the public may, by written petition, request the commission to modify the representation of those groups or organizations on a local emergency planning committee. If the commission reduces or eliminates representation of a group or organization on a committee, it shall declare the position of the member representing that group or organization to be abolished and the person whose position is so abolished shall cease to serve as a member of the committee on the effective date of the commission's declaration. Appointments of members to the committee to fill positions established as a result of modification to the composition of the committee shall be made in the same manner as original appointments under this subchapter.

[ 1989, c. 464, §3 (NEW) .]

#### SECTION HISTORY

1989, c. 464, §3 (NEW). 2013, c. 462, §10 (AMD).

## §794. LOCAL EMERGENCY RESPONSE PLANS

**1. Plan development.** The local emergency planning committee of each emergency planning district shall prepare and submit to the commission a local emergency response plan for the district. The district's plan shall contain all of the following in compliance with federal law:

A. An identification of each facility within the district that:

- (1) Has any extremely hazardous substance present at the facility in an amount that exceeds the threshold planning quantity for the substance; and
- (2) Annually manufactures, processes or otherwise uses an amount of a toxic chemical that exceeds the threshold planning quantity for the substance; [1989, c. 464, §3 (NEW) .]

B. An identification of facilities contributing or subjected to additional risk due to their proximity to facilities identified under paragraph A, subparagraph (1); [1989, c. 464, §3 (NEW) .]

- C. A copy of the facility emergency response plan as defined in section 795; [1989, c. 464, §3 (NEW).]
- D. A composite statement of specialized equipment, facilities, personnel and emergency response organizations available within the district to respond to releases of hazardous materials; [1989, c. 464, §3 (NEW).]
- E. An evaluation of the need for resources to develop, implement, and exercise the emergency plan, including recommendations for additional resources and mechanisms for providing those resources; [1989, c. 464, §3 (NEW).]
- F. An identification of procedures for reliable, effective and timely notification and communication among emergency responders within the district and to the public in the event of a release of an extremely hazardous substance or CERCLA hazardous substance from a facility identified under paragraph A, subparagraph (1); [1989, c. 464, §3 (NEW).]
- G. Designations of community emergency coordinators; [1989, c. 464, §3 (NEW).]
- H. The methods for determining the occurrence of a release of an extremely hazardous substance from each facility identified under paragraph A and for identification of the geographic area or population likely to be affected by such a release; [1989, c. 464, §3 (NEW).]
- I. Evacuation plans including, but not limited to, provisions for precautionary evacuation and alternative traffic routes in the event of a release of an extremely hazardous substance from a facility identified in paragraph A; [1989, c. 464, §3 (NEW).]
- J. An identification of routes likely to be used for the transportation of extremely hazardous substances identified under paragraph A; [1989, c. 464, §3 (NEW).]
- K. The development of training programs, seminars and other forms of educational programs for personnel of facilities identified under paragraph A, emergency response personnel of political subdivisions within the district and medical personnel; and [1989, c. 464, §3 (NEW).]
- L. The development of methods and schedules for exercising the plan. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW) . ]

**2. Plan adoption.** After completion of a local emergency response plan for the district, the committee shall submit the plan to the commission for review and recommendations.

A. Prior to the adoption of the local emergency response plan for the district by the commission, the plan shall be subject to a 30-day public comment period. Copies of the plan shall be placed in the town hall of each community included in the plan within the emergency planning district and any other location designated by the committee. Members of the general public shall have free access to the plan for review. [1989, c. 464, §3 (NEW).]

B. At least annually, each committee shall conduct an exercise of its local emergency response plan. The committee shall notify the commission at least 30 days before each exercise. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW) . ]

**3. Plan review.** Each committee shall annually, or more frequently as changed circumstances in the emergency planning district or at any facility in the district may require, review the local emergency response plan of the district. The review shall include, without limitation:

A. An evaluation of the need for funds, personnel, equipment and facilities to develop, revise, implement and exercise the plan; and [1989, c. 464, §3 (NEW).]

B. Recommendations and requests to the commission regarding the additional funds that may be required for those purposes and the means for providing them. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW) .]

#### SECTION HISTORY

1989, c. 464, §3 (NEW).

## §795. FACILITY EMERGENCY RESPONSE PLANS

The operators of any facility where any extremely hazardous substance is present in a quantity above the threshold planning quantity are subject to the following. [1989, c. 464, §3 (NEW); 1989, c. 638, §2 (AMD).]

**1. Written plans.** A written plan in accordance with agency guidelines to protect public health and safety in the event of an accidental release must be prepared and submitted by the facility operators to the commission, committee and fire department with jurisdiction over the facility no later than 6 months from the effective date of this subchapter. The plan must satisfy the requirements of the agency and shall, at a minimum:

- A. Identify the facility emergency coordinator and that person's alternate; [1989, c. 464, §3 (NEW).]
- B. Describe the emergency warning systems and list nearby emergency and health personnel; [1989, c. 464, §3 (NEW).]
- C. Describe employee training and testing programs; [1989, c. 464, §3 (NEW).]
- D. Describe available response equipment and protective garments; [1989, c. 464, §3 (NEW).]
- E. Describe emergency health treatment procedures including notification, facility evacuation and community evacuation and shelter-in-place procedures; [1989, c. 464, §3 (NEW).]
- F. Identify transportation routes and transportation methods for extremely hazardous substances; [1989, c. 464, §3 (NEW).]
- G. List the names of all companies providing sudden and nonsudden accidental coverage to the facility; and [1989, c. 464, §3 (NEW).]
- H. List any mutual aid agreements between the facility and emergency responders or public safety agencies. [1989, c. 464, §3 (NEW).]

Emergency response plans required pursuant to other state or federal laws may be used to fulfill these requirements if the plans contain the provisions required by this section.

[ 1989, c. 464, §3 (NEW) .]

**2. Annual test.** An annual test demonstration and annual review must be held by the facility owners or operators to ensure public health and safety.

[ 1989, c. 464, §3 (NEW) .]

**3. Emergency response equipment.** By October 1, 1989, the operators of facilities covered under this subchapter shall, through mutual aid agreements with a committee or local emergency response officials, provide for use by emergency personnel, primary response equipment which shall at a minimum include



protective clothing and breathing apparatus necessary to contain or extinguish releases of substances handled by their facility. Facilities may coordinate the provision of equipment with other facilities in the locality as well as the appropriate municipal public safety agencies.

[ 1989, c. 464, §3 (NEW) .]

Any person or facility that provides personnel or equipment through a mutual aid agreement with a committee or local emergency response officials is immune from civil liability to the same extent provided government employees and political subdivisions in Title 14, chapter 741 for acts performed within the scope of the mutual aid agreement. [1989, c. 464, §3 (NEW).]

#### SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 638, §2 (AMD).

## §796. MATERIAL SAFETY DATA SHEETS

**1. Data sheets.** Any person who owns or operates a facility and is required to prepare or have available a material safety data sheet for a hazardous chemical under the United States Occupational Safety and Health Act of 1970, Public Law 91-596, as amended, and regulations promulgated under it shall submit to the local emergency planning committee of the emergency planning district in which the facility is located, the commission and the fire department having jurisdiction over the facility, either data sheets or lists for which data sheets are available of the hazardous chemicals and extremely hazardous substances that are stored at the facility in an amount that exceeds the threshold planning quantity for those chemicals or substances. The hazardous chemicals and extremely hazardous substances shall be grouped together on any such data sheets by the categories of health and physical hazards. The data sheets shall include, without limitation, all criteria set forth in 29 Code of Federal Regulations, Section 1910.1200.

[ 1989, c. 464, §3 (NEW) .]

**2. Content of lists.** The list of chemicals referred to in subsection 1 must include each of the following:

A. A list of hazardous chemicals for which material safety data sheets are required under subsection 1 grouped in categories of health and physical hazards; [1989, c. 464, §3 (NEW).]

B. The chemical name or the common name of each such chemical as provided on the material safety data sheet; and [1989, c. 464, §3 (NEW).]

C. Any hazardous component of each such chemical as provided on the material safety data sheet. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW) .]

**3. Revised data sheets.** Within 3 months after the discovery of new information about a hazardous chemical or extremely hazardous substance identified in the data sheet required by subsection 1, paragraph A or within 3 months after obtaining a hazardous chemical or extremely hazardous substance for which reporting is required by subsection 1, paragraph A, the owner or operator of a facility shall prepare and submit a revised data sheet or a revised list of chemicals for which data sheets are available that meets the requirements of subsection 1, paragraph A and contains the new information to the local emergency planning committee, the commission, and the fire department having jurisdiction over the facility.

[ 1989, c. 464, §3 (NEW) .]

#### SECTION HISTORY

1989, c. 464, §3 (NEW).

## §797. MAINE CHEMICAL INVENTORY REPORT

A person required to submit a facility emergency response plan, material safety data sheet or list of hazardous chemicals and extremely hazardous substances must submit a Maine chemical inventory report to the commission, the local emergency planning committee and the local fire department with jurisdiction over the facility. The inventory report and fee must be submitted by March 1st annually for the previous calendar year. Information on the inventory of extremely hazardous substances and hazardous chemicals for the previous calendar year is required in the report. This report must state, at a minimum: [2009, c. 479, §1 (AMD).]

**1. Chemical name.** The chemical name of each substance listed;

[ 1989, c. 464, §3 (NEW) .]

**2. Maximum weight.** The maximum number of pounds of each substance present at any time during the preceding year;

[ 1989, c. 464, §3 (NEW) .]

**3. Average amount.** The average daily amount of each substance present during the preceding year;

[ 1989, c. 464, §3 (NEW) .]

**4. Chemical storage.** A brief description of the manner of the chemical's storage;

[ 1989, c. 464, §3 (NEW) .]

**5. Chemical location.** The chemical's location at the facility;

[ 1989, c. 464, §3 (NEW) .]

**6. Information withholding.** An indication if the person is electing to withhold information from disclosure under section 800; and

[ 2009, c. 579, Pt. B, §1 (AMD); 2009, c. 579, Pt. B, §13 (AFF) .]

**7. Transportation.** A description of the manner in which the substance is shipped to the facility, including standard and alternate transportation routes taken through the State from point of origin or entry to the facility. Records held by the commission regarding standard and alternate transportation routes are confidential records for the purposes of Title 1, chapter 13, subchapter 1. The commission may provide those records to state, county or local emergency management agencies or public officials, as the commission determines necessary, but shall require those agencies or officials to hold those records as confidential.

[ 2009, c. 579, Pt. B, §2 (AMD); 2009, c. 579, Pt. B, §13 (AFF) .]

**8. Progress toward toxics use reduction goals.**

[ 2009, c. 579, Pt. B, §13 (AFF); 2009, c. 579, Pt. B, §3 (RP) .]

### SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 929, §§2,3 (AMD). 1993, c. 355, §1 (AMD). 1995, c. 411, §1 (AMD). 2001, c. 533, §1 (AMD). 2009, c. 252, §5 (AMD). 2009, c. 479, §1 (AMD). 2009, c. 579, Pt. B, §§1-3 (AMD). 2009, c. 579, Pt. B, §13 (AFF).

## §798. EMERGENCY NOTIFICATION

**1. Immediate notification.** In the event of an unlicensed release from any facility where a CERCLA hazardous substance or an extremely hazardous substance is produced, used or stored, that requires reporting under the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 103 (a) or the Superfund Amendments and Reauthorization Act of 1986, Title III, Section 304(a), the owner or operator of the facility at which the release occurs must immediately contact the local fire department with jurisdiction over the site, the State Police as the designated agent for the commission and the community emergency coordinator. This oral notification must contain, to the extent known at the time of notice and so long as no delay in responding to the emergency results, information included in the Maine Emergency Management Agency's AR-1 form including:

- A. The specific location of the release; [1989, c. 464, §3 (NEW).]
- B. Identification of the chemical released and the estimated quantity released; [1989, c. 464, §3 (NEW).]
- C. The time and duration of the release; [1989, c. 464, §3 (NEW).]
- D. The environmental media into which the chemical was released; [1989, c. 464, §3 (NEW).]
- E. Any known or anticipated acute or chronic health risks; [1989, c. 464, §3 (NEW).]
- F. Any precautions that should be taken, including evacuation or medical surveillance; and [1989, c. 464, §3 (NEW).]
- G. The names and telephone numbers of parties to be contacted for further information. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW) .]

**2. Transportation releases.** For releases of substances covered under this subchapter during transportation, the responsible party must contact the State Police.

[ 1989, c. 464, §3 (NEW) .]

**3. Follow-up report.** Within 14 days of the release, the owner or operator must file with the commission and committee a follow-up emergency notice, which details all of the information in subsection 1, along with:

- A. Actions taken to respond to and contain the release; [1989, c. 464, §3 (NEW).]
- B. The cause of the release and the events leading to it; [1989, c. 464, §3 (NEW).]
- C. The known or anticipated health risks of the release and any medical attention needs of exposed persons; and [1989, c. 464, §3 (NEW).]
- D. The measures taken or to be taken to avoid recurrence. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW) .]

### SECTION HISTORY

1989, c. 464, §3 (NEW).

## §799. TOXIC CHEMICAL RELEASE REPORTS

Under this section, the owner or operator of every facility with 10 or more employees and within Standard Industrial Classification Codes 20-39 must file toxic chemical release reports for routine releases with the United States Environmental Protection Agency, the Department of Environmental Protection, the commission and the local emergency planning committee by October 1, 1989 and annually thereafter

consistent with the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 313, and 40 Code of Federal Regulations, Part 372. Those reports must be made available to the public by the commission and the local emergency planning committee. [2009, c. 579, Pt. B, §4 (AMD); 2009, c. 579, Pt. B, §13 (AFF).]

## SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 929, §4 (AMD). 1993, c. 355, §2 (AMD). 2009, c. 252, §6 (AMD). 2009, c. 579, Pt. B, §4 (AMD). 2009, c. 579, Pt. B, §13 (AFF).

## §800. TRADE SECRETS

**1. Withholding information.** Information that constitutes a trade secret may be withheld from the local emergency planning committee or fire department, and specific chemical names and identifications may be withheld in accordance with this subchapter if:

- A. The information has not been disclosed to any other person except the commission, the local emergency planning committee, a public official or a person bound by confidentiality agreement, and reasonable measures have been taken to protect confidentiality; [1989, c. 464, §3 (NEW).]
- B. The information is not required to be disclosed by law; [1989, c. 464, §3 (NEW).]
- C. Disclosure is likely to cause harm to the business's competitive position; and [1989, c. 464, §3 (NEW).]
- D. The chemical identity in question is not readily discoverable through reverse engineering. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW) .]

**2. Substitute information.** If trade secrecy is claimed, the owner or operator of the facility shall substitute on the relevant forms:

- A. The generic class of the material; [1989, c. 464, §3 (NEW).]
- B. Sufficient information so that emergency responders will not be hampered; and [1989, c. 464, §3 (NEW).]
- C. Identification of potential adverse health effects posed by the hazardous chemical or extremely hazardous substance. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW) .]

**3. Exception.** Trade secrecy cannot be claimed if:

- A. The commission and the United States Environmental Protection Agency so rule; [1989, c. 464, §3 (NEW).]
- B. Notification is required by a release; or [1989, c. 464, §3 (NEW).]
- C. In the event of a life threatening situation, the information is requested by the State Toxicologist or a health professional treating a victim of exposure to the chemical. [1989, c. 464, §3 (NEW).]

[ 1989, c. 464, §3 (NEW) .]

## SECTION HISTORY

1989, c. 464, §3 (NEW).

## §801. FEES

**1. Fees required.** The operators of any facility that is required to report to the State Emergency Response Commission under the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Sections 311, 312 and 313, are subject to the fees adopted pursuant to subsection 2. All fees collected pursuant to this section shall be deposited in the Emergency Response Commission Fund.

[ 1989, c. 464, §3 (NEW) .]

**2. Fees established.** The director, with the advice of the commission and subject to the Maine Administrative Procedure Act, shall promulgate rules to establish a fee schedule for:

A. Registering facilities, not to exceed \$50 per facility; and [1989, c. 464, §3 (NEW) .]

B. Reporting hazardous materials, on a weight basis per chemical. [1989, c. 464, §3 (NEW) .]

[ 2015, c. 1, §43 (COR) .]

**3. Fee caps.** Facility owners and operators shall be subject to maximum fees of \$5,000 per facility for reporting hazardous materials under this section.

[ 1989, c. 464, §3 (NEW) .]

**4. Fee exemptions.** The following operators are exempt from the following requirements under this section.

A. Retail marketers of petroleum products with a storage capacity of 75,000 pounds or less per product shall be exempt from the reporting fee. [1989, c. 464, §3 (NEW) .]

B. Owners and operators of commercial agricultural operations are exempt from the fee requirements under this section for registering agricultural facilities and for hazardous materials used in the commercial production of agricultural products as defined in Title 7, section 152, subsection 2. Agricultural product processing facilities are not exempt from the fee requirements. For the purposes of this section, "processing" does not include the packaging of raw commodities or agricultural products for resale. [2007, c. 649, §9 (AMD) .]

C. Public schools are exempt from registration fees and inventory fees imposed pursuant to this section prior to March 1, 1994 for underground storage tanks. This paragraph does not exempt a public school from registration or inventory requirements other than the payment of fees prior to March 1, 1994 for underground storage tanks. [1993, c. 571, §1 (NEW) .]

[ 2007, c. 649, §9 (AMD) .]

### SECTION HISTORY

1989, c. 464, §3 (NEW). 1993, c. 571, §1 (AMD). 2007, c. 649, §9 (AMD). RR 2015, c. 1, §43 (COR).

## §802. EMERGENCY RESPONSE COMMISSION FUND

The Emergency Response Commission Fund is established to be used by the agency as a nonlapsing fund for carrying out the purposes of this subchapter. All fees collected under this subchapter shall be credited to this fund. All fines or penalties assessed pursuant to section 806 shall be credited to this fund. [1989, c. 464, §3 (NEW) .]

**1. Disbursements allowed.** The agency, with the advice of the commission, shall make disbursements from the fund for the following purposes:

- A. To employ personnel within the agency to manage and coordinate data collected pursuant to this subchapter; [1989, c. 464, §3 (NEW).]
- B. To fund county training programs for local emergency planning committees; [1989, c. 464, §3 (NEW).]
- C. To provide training grants; [2013, c. 462, §11 (AMD).]
- D. To provide for the resource needs of the local emergency planning committees ; and [2013, c. 462, §11 (AMD).]
- E. To provide for the procurement and maintenance of hazardous materials incident response equipment and related consumable supplies. Disbursements for this purpose must be approved by the commission. [2013, c. 462, §12 (NEW).]

[ 2013, c. 462, §§11, 12 (AMD) .]

#### SECTION HISTORY

1989, c. 464, §3 (NEW). 2013, c. 462, §§11, 12 (AMD).

### §803. AGENCY RESPONSIBILITIES

The Maine Emergency Management Agency has the following responsibilities under this subchapter. [1989, c. 464, §3 (NEW).]

**1. Review facility emergency plans.** The agency shall review facility area emergency plans submitted to the commission and make recommendations to the commission on their acceptance. The agency shall also develop model emergency plans.

[ 1989, c. 464, §3 (NEW) .]

**2. Manage and coordinate data.** The agency shall manage and coordinate data submitted pursuant to the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

[ 1989, c. 464, §3 (NEW) .]

**3. Liaison.** The agency shall provide liaison to the State Emergency Response Commission, local emergency planning committees and industrial facilities throughout the State that manufacture, use, store or process hazardous materials.

[ 1989, c. 464, §3 (NEW) .]

**4. Monitor compliance.** The agency shall monitor the compliance of facilities, owners and operators with this subchapter and shall conduct inspections as necessary to ensure compliance with this subchapter. In the event of an accident or incident, the agency may investigate and inspect facilities to determine the cause and circumstances and may order appropriate reporting, facility response mitigation and corrective actions pursuant to any requirement of this subchapter.

[ 1989, c. 464, §3 (NEW); 1989, c. 638, §3 (AMD) .]

#### SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 638, §3 (AMD).

## §804. LOCAL AUTHORITY

Nothing in this subchapter or rules adopted under it preempts or otherwise affects any ordinance, regulation or rule of a political subdivision, limits the authority of a political subdivision to adopt or enforce any ordinance, regulation, or rule that it is authorized to adopt or enforce pursuant to the Constitution of Maine and laws of this State, or limits the authority of any department or agency of this State to adopt any rule or enforce any law or rule of this State that it is authorized to adopt or enforce under the laws of this State. This subchapter does not abridge rights of action or remedies in equity, under common law, or as provided by law. [1989, c. 464, §3 (NEW).]

### SECTION HISTORY

1989, c. 464, §3 (NEW).

## §805. COMMUNITY RIGHT TO KNOW

**1. Availability to public.** Each emergency response plan, material safety data sheet, list described in section 796, subsection 2, Maine chemical inventory report, toxic chemical release report and follow-up emergency notice must be made available to the general public, consistent with section 800, during normal working hours at the location or locations designated by the Administrator of the United States Environmental Protection Agency, the Governor, the commission or the local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 797, the commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 797 to be contained in a Maine chemical inventory report.

[ 2009, c. 252, §7 (AMD) .]

**2. Notice of public availability.** Each committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets and Maine chemical inventory reports have been submitted under this section. The notice must state that follow-up emergency notices may subsequently be issued and announce that members of the public who wish to review any such plan, sheet, report or follow-up notice may do so at the location designated under subsection 1.

[ 2009, c. 252, §7 (AMD) .]

### SECTION HISTORY

1989, c. 464, §3 (NEW). 2009, c. 252, §7 (AMD).

## §806. ENFORCEMENT; PENALTIES

**1. Commission orders.** The commission may issue orders requiring the owner or operator of a facility or other responsible person at a facility to abate a violation of any section of this subchapter or rule adopted under it.

[ 1989, c. 464, §3 (NEW) .]

**2. Civil penalties.** The following penalties apply to the following violations.

A. A person who violates section 795 is subject to a civil penalty of not more than \$25,000. [2003, c. 452, Pt. V, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates section 796 is subject to a civil penalty of not more than \$1,000. [2003, c. 452, Pt. V, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A person who violates section 797 is subject to a civil penalty of not more than \$1,000. [2003, c. 452, Pt. V, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. A person who violates section 798, subsection 1 or 2 is subject to a civil penalty of not more than \$25,000. [2003, c. 452, Pt. V, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

Civil penalties under this subsection are payable to the Emergency Response Commission Fund. These penalties are recoverable in a civil action. Minimum penalties under this subsection are \$100 per day. Each day of violation constitutes a separate violation.

[ 2003, c. 452, Pt. V, §1 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Criminal penalties.** The following penalties apply to the following violations.

A. A person who intentionally, knowingly or recklessly fails to comply with the reporting requirements of section 798, subsection 1 commits a Class C crime and, notwithstanding Title 17-A, section 1301, is subject to a fine of not more than \$25,000. [2003, c. 452, Pt. V, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates paragraph A when the person has a prior conviction for violation of paragraph A commits a Class C crime and, notwithstanding Title 17-A, section 1301, is subject to a fine of not more than \$50,000. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence. [2003, c. 452, Pt. V, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. V, §2 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

**4. Authority to bring civil actions.** Civil actions may be brought as follows.

A. Any person may commence a civil action on that person's own behalf against the owner or operator of a facility for failure to do any of the following:

- (1) Submit a follow-up emergency notice under section 798, subsection 3;
- (2) Submit a material safety data sheet or a list under section 796;
- (3) Complete and submit a Maine chemical inventory report under section 797; or
- (4) Complete and submit a toxic chemical release report under section 799. [2009, c. 252, §8 (AMD).]

B. No action may be brought against the owner or operator of a facility if the Federal Government or the State has commenced and is diligently pursuing an administrative order, civil action or criminal action to enforce the requirement concerned or to impose a civil penalty for an alleged violation of the requirement, either under this subsection or under comparable federal law or rule. [1989, c. 464, §3 (NEW).]

C. No action may be commenced under this subsection unless the plaintiff has given at least 60 days prior notice to the commission, the Attorney General and the owner or operator of the facility alleged to be in violation that the plaintiff will commence the action. [1989, c. 464, §3 (NEW).]

D. Action brought against an owner or operator under this section shall be brought in Superior Court for the county in which the alleged violation occurred. [1989, c. 464, §3 (NEW).]

E. Nothing in this subsection may restrict or expand any right which any person or class of persons may have under any federal or state law or common law to seek enforcement of any requirement or to seek any other relief. [1989, c. 464, §3 (NEW).]

F. In any action under this subsection, the Federal Government or the State, or both, may intervene as a matter of right. [1989, c. 464, §3 (NEW).]



G. In any action under this subsection, any person may intervene as a matter of right when that person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the court determines that the person's interest is adequately represented by existing parties in the action. [1989, c. 464, §3 (NEW).]

[ 2009, c. 252, §8 (AMD) .]

#### SECTION HISTORY

1989, c. 464, §3 (NEW). 2003, c. 452, §§V1,2 (AMD). 2003, c. 452, §X2 (AFF). 2009, c. 252, §8 (AMD).

## Subchapter 4: ADMINISTRATION

### §821. EMINENT DOMAIN

When the Governor has issued a proclamation in accordance with section 742 and, when in his judgment for the protection and welfare of the State and its inhabitants, the situation requires it as a matter of public necessity or convenience, he may take possession of any real or personal property located within the State for public uses in furtherance of this chapter. [1983, c. 460, §3 (NEW).]

**1. Real property.** If real estate is seized under this section, a declaration of the property seized, containing a full and complete description, shall be filed with the register of deeds for the county in which the seizure is located and a copy of that declaration shall be furnished to the owner.

[ 1983, c. 460, §3 (NEW) .]

**2. Personal property.** If personal property is seized under this section, there shall be entered, upon a docket containing a permanent record, a description of that personal property and its condition when seized, and there shall be furnished to the owner of the seized property a true copy of the docket recording.

[ 1983, c. 460, §3 (NEW) .]

**3. Compensation.** The Governor shall award reasonable compensation to the owners of the property which he takes under this section and for its use and for any injury thereto or destruction thereof caused by that use.

[ 1983, c. 460, §3 (NEW) .]

**4. Appeal.** The owner of property of which possession has been taken under this section and to whom no award has been made or who is dissatisfied with the amount awarded him as compensation may bring an action in the Superior Court in the county in which he lives or has a usual place of business or in the County of Kennebec to have the amount of damages to which he is entitled determined. The plaintiff may bring the action within 6 years after the date when possession of the property was taken under this section, except that, if the owner of the property is in the military service of the United States at any time during which he should otherwise have brought his action, he may bring the action within 6 years after his discharge from that military service. The plaintiff and the State shall severally have the right to have the damages assessed by a jury.

[ 1983, c. 460, §3 (NEW) .]

**5. Continuation of right of action.** In the event the owner of property seized under this section dies, preventing him from bringing or continuing the action provided in subsection 4, his executor or administrator may bring or continue the action.

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §822. IMMUNITY

Neither the State nor any of its agencies or political subdivisions nor a person called out pursuant to section 784-A, including a voluntary and uncompensated grantor of a permit for the use of the grantor's premises as an emergency management shelter, may, while engaged in any emergency management activities and while complying with or attempting to comply with this chapter or any rule adopted pursuant to this chapter, be liable for the death of or injury to any person, or damage to property, as a result of those activities. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, under the Maine Workers' Compensation Act of 1992, under any pension law or under any act of Congress. [2003, c. 510, Pt. C, §15 (RPR).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). RR 1993, c. 1, §110 (COR). 2001, c. 614, §20 (AMD). 2001, c. 662, §88 (AMD). 2003, c. 510, §C15 (RPR).

## §823. COMPENSATION FOR INJURIES RECEIVED IN LINE OF DUTY

All members of the emergency management forces are deemed to be employees of the State while on, preparing for or training for emergency management duty. They have all the rights given to state employees under the former Maine Workers' Compensation Act or the Maine Workers' Compensation Act of 1992. All claims must be filed, prosecuted and determined in accordance with the procedure set forth in the Maine Workers' Compensation Act of 1992. [2013, c. 146, §16 (AMD).]

**1. Average weekly wage.** In computing the average weekly wage of any claimant under this section, the average weekly wage must be taken to be the earning capacity of the injured person in the occupation in which the injured person is regularly engaged.

[ 1995, c. 462, Pt. A, §72 (AMD) .]

**2. Setoff.** Any sums payable under any act of Congress or other federal program as compensation for death, disability or injury of emergency management workers must be considered with the determination and settlement of any claim brought under this section. When payments received from the Federal Government are less than an injured member would have been entitled to receive under this section, the injured member is entitled to receive all the benefits to which the injured member would have been entitled under this section, less the benefits actually received from the Federal Government.

[ 2001, c. 614, §22 (AMD); 2001, c. 662, §90 (AMD) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 1995, c. 462, §A72 (AMD). 2001, c. 614, §§21,22 (AMD). 2001, c. 662, §§89,90 (AMD). 2003, c. 510, §A38 (AMD). 2013, c. 146, §16 (AMD).

## §824. APPROPRIATIONS

**1. General Fund.** The Governor may whenever an emergency has been declared, as provided in section 742, transfer to the agency money from the General Fund of the State, including unexpended appropriation balances of any state department or agency, allotted or otherwise. The Governor may expend that money for the purpose of carrying out this chapter.

[ 1987, c. 769, Pt. A, §164 (AMD) .]

**2. For local emergency management expenses.** Each political subdivision may make appropriations for the payment of expenses of its local organization for emergency management in the same manner as for its other ordinary expenses. In making those appropriations, the political subdivision shall specify the amounts and purposes for which the money appropriated may be used by the local organizations.

[ 2001, c. 614, §23 (AMD); 2001, c. 662, §91 (AMD) .]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 769, §A164 (AMD). 2001, c. 614, §23 (AMD). 2001, c. 662, §91 (AMD).

## §825. ACCEPTANCE OF AID

Whenever the Federal Government or any of its agencies or officers or any person, firm or corporation offers to the State or to any of its political subdivisions services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of emergency management, the State, acting through the Governor, or the political subdivision, acting through its executive officer or governing body, may accept that offer. Upon acceptance, the Governor of the State or the executive officer or governing body of the political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive those services, equipment, supplies, materials or funds on behalf of the State or the political subdivision subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. [2001, c. 614, §24 (AMD); 2001, c. 662, §92 (AMD).]

Notwithstanding any other provision of law, the Governor may enter into an agreement with the Federal Emergency Management Agency for debris removal financial assistance and agree on behalf of the State to indemnify the Federal Government against any claim arising from such removal as required by 42 United States Code, Section 5173. [2001, c. 662, §93 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §24 (AMD). 2001, c. 662, §§92,93 (AMD).

## §826. TRANSFER OF EQUIPMENT

Subject to the approval of the Governor, the director may convey equipment, supplies, materials or funds by sale, lease or grant to any political subdivision of the State for emergency management purposes. The conveyance is subject to the terms of the offer and the applicable state rules and federal regulations. [2001, c. 614, §25 (AMD); 2001, c. 662, §94 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B18 (AMD). 2001, c. 614, §25 (AMD). 2001, c. 662, §94 (AMD).

## §827. AID IN EMERGENCY; PENALTY

Upon the issuance of a proclamation as provided in section 742, the Governor may utilize any available property and enlist the aid of any person to assist in the effort to control, put out or end the disaster, catastrophe or emergency or aid in the caring for the safety of persons. Any person who refuses to render the aid requested without reasonable cause is guilty of a Class E crime. The State is liable for damage to any property utilized under this chapter. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §828. RIGHT-OF-WAY; VIOLATION

Personnel and equipment required to respond to emergency calls under this chapter shall have the right-of-way over all public ways and roads and the Governor is granted the right to close or restrict traffic on all roads in any area. Whoever fails to give the right-of-way to personnel, vehicles and equipment required to respond to emergency calls under this chapter, or whoever enters upon roads which have been closed to traffic under this chapter, is guilty of a Class E crime. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §829. ENFORCEMENT

It is the duty of every agency for emergency management established pursuant to this chapter and of the officers to execute and enforce orders and rules adopted by the Governor under authority of this chapter. Each emergency management agency shall have available for inspection at its office all orders and rules made by the Governor or issued under the Governor's authority. [2003, c. 510, Pt. A, §39 (RPR).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §26 (AMD). 2001, c. 662, §95 (AMD). 2003, c. 510, §A39 (AMD).

## §830. VIOLATIONS

Every officer of a political subdivision of the State with administrative responsibilities under this chapter who intentionally violates any of the provisions of this chapter commits a civil violation for which a forfeiture of \$20 may be adjudged. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §831. UTILIZATION OF EXISTING SERVICES AND FACILITIES

In carrying out this chapter, the Governor and the executive officers or governing bodies of the political subdivisions of the State shall utilize the services and facilities of existing departments, offices and agencies of the State and all their political subdivisions to the maximum extent practicable. The officers and personnel of all departments, offices and agencies shall cooperate with and extend their services and facilities to the Governor and to the emergency management organizations of the State upon request. [2003, c. 510, Pt. A, §40 (RPR).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §26 (AMD). 2001, c. 662, §96 (AMD). 2003, c. 510, §A40 (RPR).

## §832. POLITICAL ACTIVITY PROHIBITED

An emergency management organization established under the authority of this chapter may not participate in any form of political activity and may not be employed directly or indirectly for political purpose. [2003, c. 510, Pt. A, §41 (RPR).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §26 (AMD). 2001, c. 662, §97 (AMD). 2003, c. 510, §A41 (AMD).

## §833. CIVIL EMERGENCY PREPAREDNESS PERSONNEL

*(REPEALED)*

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 207, (RP).

## §834. INCONSISTENT LAWS SUSPENDED

Except as otherwise provided, all existing laws, rules and regulations inconsistent with this chapter or of any order or rule issued under the authority of this chapter shall be suspended during the period of time and to the extent that the inconsistency exists. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## Subchapter 5: SPECIAL OPERATIONAL PLANS

## §850. SEARCH AND RESCUE PLAN

The director shall compile a state search and rescue plan encompassing all activities including land, sea and air searches for persons, boats and airplanes. In the preparation of this plan, the director shall include such individual agency plans as currently exist, seek the advice and counsel of all currently designated federal and state search and rescue agencies and obtain their approval of the final compiled plan. All other search and rescue agencies shall cooperate with the agency in preparation of this plan. Responsibility for execution of the plan is with the individual state agencies that have responsibility for the area being searched or for lost or downed aircraft, as appropriate. These agencies shall follow all the provisions of the approved plan. [2013, c. 146, §17 (AMD).]

This plan must be reviewed and updated as necessary. The director shall see that the plan and its revisions receive suitable dissemination on a timely basis. Individual agencies shall submit revisions of their search and rescue plans to the director for comment and incorporation into the agency's comprehensive emergency management plan for the State. [2013, c. 146, §17 (AMD).]

### SECTION HISTORY

1989, c. 489, §4 (NEW). 2001, c. 662, §98 (AMD). 2013, c. 146, §17 (AMD).

## §851. MASS FATALITY PLAN

The director, in consultation with the Office of Chief Medical Examiner, the Department of Health and Human Services and the Maine Center for Disease Control and Prevention within that department and other agencies as appropriate, shall prepare a plan for the recovery, identification and disposition of human remains in a disaster. The Office of Chief Medical Examiner is responsible for execution of the plan, and all members of the emergency management forces shall cooperate and assist the office in executing the plan. [2017, c. 475, Pt. A, §64 (AMD).]

This plan must be reviewed and updated as necessary. The director shall see that the plan and its revisions receive suitable dissemination on a timely basis. [2013, c. 146, §18 (NEW).]

SECTION HISTORY

2013, c. 146, §18 (NEW). 2017, c. 475, Pt. A, §64 (AMD).

## **§852. PLANS DEEMED PART OF STATEWIDE COMPREHENSIVE PLAN**

An operational plan developed by an agency of the State that has jurisdiction over responding to an emergency is deemed to be part of the comprehensive emergency management plan for the State. [2013, c. 146, §18 (NEW).]

SECTION HISTORY

2013, c. 146, §18 (NEW).

## Chapter 15: INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

### **§901. PURPOSE--ARTICLE I**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

### **§902. STANDARDS; RULES--ARTICLE II**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

### **§903. REQUEST FOR MUTUAL AID--ARTICLE III**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

### **§904. SPECIAL SKILLS--ARTICLE IV**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

### **§905. LIABILITY--ARTICLE V**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

### **§906. SUPPLEMENTARY AGREEMENTS--ARTICLE VI**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

### **§907. COMPENSATION AND DEATH BENEFITS--ARTICLE VII**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

### **§908. REIMBURSEMENT--ARTICLE VIII**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

**§909. EVACUATION--ARTICLE IX***(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

**§910. AVAILABILITY OF COMPACT--ARTICLE X***(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

**§911. PARTICIPATION OF FEDERAL AGENCY--ARTICLE XI***(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

**§912. ENTRY INTO FORCE--ARTICLE XII***(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

**§913. WITHDRAWAL--ARTICLE XIII***(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

**§914. CONSTRUCTION AND SEPARABILITY OF PROVISIONS--ARTICLE XIV***(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).

**§915. APPROVAL OF COMPACT***(REPEALED)*

## SECTION HISTORY

1983, c. 460, §3 (NEW). 2009, c. 252, §9 (RP).



## Chapter 16: EMERGENCY MANAGEMENT ASSISTANCE COMPACT

### §921. PURPOSE AND AUTHORITIES--ARTICLE I

The emergency management assistance compact, referred to in this chapter as the "compact," is made and entered into by and between the participating member states that enact this compact, referred to in this chapter as "party states." For the purposes of this agreement, the term "states" means the several states, the Commonwealth of Puerto Rico, the District of Columbia and all U.S. territorial possessions. [1997, c. 780, §2 (NEW).]

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency or enemy attack. [1997, c. 780, §2 (NEW).]

This compact also provides for mutual cooperation in emergency related exercises, testing or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, with such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states. [1997, c. 780, §2 (NEW).]

#### SECTION HISTORY

1997, c. 780, §2 (NEW).

### §922. GENERAL IMPLEMENTATION--ARTICLE II

Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies that require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency because few, if any, individual states have all the resources they need in all types of emergencies or the capability of delivering resources to areas where emergencies exist. [1997, c. 780, §2 (NEW).]

The prompt, full and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source that are essential to the safety, care and welfare of the people in the event of any emergency or disaster declared by a party state, must be the underlying principle on which all articles of this compact are understood. [1997, c. 780, §2 (NEW).]

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management is responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact. [1997, c. 780, §2 (NEW).]

#### SECTION HISTORY

1997, c. 780, §2 (NEW).

### §923. PARTY STATE RESPONSIBILITIES--ARTICLE III

**1. Formulate plans and programs.** It is the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this section. In formulating such plans, and in carrying them out, the party states, to the extent practical, shall:

- A. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency or enemy attack; [1997, c. 780, §2 (NEW).]
- B. Review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency; [1997, c. 780, §2 (NEW).]
- C. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans; [1997, c. 780, §2 (NEW).]
- D. Assist in warning communities adjacent to or crossing state boundaries; [1997, c. 780, §2 (NEW).]
- E. Protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue and critical lifeline equipment, services and resources, both human and material; [1997, c. 780, §2 (NEW).]
- F. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and [1997, c. 780, §2 (NEW).]
- G. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the responsibilities described in this subsection. [1997, c. 780, §2 (NEW).]

[ 1997, c. 780, §2 (NEW) .]

**2. Request assistance.** The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this chapter only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request must be confirmed in writing within 30 days of the verbal request. Requests must provide the following information:

- A. A description of the emergency service function for which assistance is needed, including but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services and search and rescue; [1997, c. 780, §2 (NEW).]
- B. The amount and type of personnel, equipment, materials and supplies needed and a reasonable estimate of the length of time they will be needed; and [1997, c. 780, §2 (NEW).]
- C. The specific place and time for staging of the assisting party's response and a point of contact at that location. [1997, c. 780, §2 (NEW).]

[ 1997, c. 780, §2 (NEW) .]

**3. Consultation between state officials.** There must be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans and resource records relating to emergency capabilities.

[ 1997, c. 780, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §924. LIMITATIONS--ARTICLE IV

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms of this compact, except that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for that state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, duties, rights and privileges as are afforded forces of the state in which they are performing emergency services, except the power of arrest unless specifically authorized by the receiving state. Emergency forces continue under the command and control of their regular leaders, but the organizational units come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and continue as long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state or states, whichever is longer. [1997, c. 780, §2 (NEW).]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §925. LICENSES AND PERMITS--ARTICLE V

Whenever a person holds a license, certificate or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party state, such person is deemed licensed, certified or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state prescribes by executive order or otherwise. [1997, c. 780, §2 (NEW).]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §926. LIABILITY--ARTICLE VI

Officers or employees of a party state rendering aid in another state pursuant to this compact are considered agents of the requesting state for tort liability and immunity purposes. A party state or its officers or employees rendering aid in another state pursuant to this compact are not liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article does not include willful misconduct, gross negligence or recklessness. [1997, c. 780, §2 (NEW).]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §927. SUPPLEMENTARY AGREEMENTS--ARTICLE VII

Because it is probable that the pattern and detail of the machinery for mutual aid among 2 or more states may differ from that among the states that are party to this compact, this compact contains elements of a broad base common to all states, and nothing in this compact precludes any state from entering into supplementary agreements with another state or affects any other agreements already in force between states. Supplementary agreements may include, but are not limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies. [1997, c. 780, §2 (NEW).]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §928. COMPENSATION--ARTICLE VIII

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and to representatives of deceased members of those forces if the members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state. [1997, c. 780, §2 (NEW).]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §929. REIMBURSEMENT--ARTICLE IX

Any party state rendering aid in another state pursuant to this compact must be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with those requests. An aiding party state may assume in whole or in part any such loss, damage, expense or other cost or may loan such equipment or donate such services to the receiving party state without charge or cost. Any 2 or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Expenses under section 928 are not reimbursable under this section. [1997, c. 780, §2 (NEW).]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §930. EVACUATION--ARTICLE X

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant must be prepared and maintained between the party states and the emergency management or emergency services directors of the various jurisdictions where any type of incident requiring evacuations might occur. These plans must be put into effect by request of the state from which evacuees come and must include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies and all other relevant factors. The plans must provide that the party state receiving evacuees and the party state from which the evacuees come must mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures must be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees. [1997, c. 780, §2 (NEW).]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §931. IMPLEMENTATION--ARTICLE XI

**1. Enactment.** This compact becomes operative immediately upon its enactment into law by any 2 states. After it becomes operative, this compact becomes effective as to any other state upon its enactment by that state.

[ 1997, c. 780, §2 (NEW) .]

**2. Withdraw from compact.** Any party state may withdraw from this compact by enacting a statute repealing the compact, but the withdrawal does not take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. The action does not relieve the withdrawing state from obligations assumed under this compact prior to the effective date of withdrawal.

[ 1997, c. 780, §2 (NEW) .]

**3. Copy of compact.** Duly authenticated copies of this compact and of such supplementary agreements as may be entered into must, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

[ 1997, c. 780, §2 (NEW) .]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §932. VALIDITY--ARTICLE XII

This chapter is construed to effectuate the purposes stated in section 921. If any provision of this compact is declared unconstitutional or the applicability of the compact to any person or circumstances is held invalid, the constitutionality of the remainder of this chapter and the applicability of the chapter to other persons and circumstances is not affected. [1997, c. 780, §2 (NEW) .]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## §933. ADDITIONAL PROVISIONS--ARTICLE XIII

This compact does not authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call the militia into federal service or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under 18 United States Code, Section 1385. [1997, c. 780, §2 (NEW) .]

### SECTION HISTORY

1997, c. 780, §2 (NEW).

## Chapter 16-A: INTERNATIONAL EMERGENCY MANAGEMENT ASSISTANCE COMPACT

### §935. PURPOSE AND AUTHORITIES - ARTICLE I

The International Emergency Management Assistance Compact, referred to in this chapter as the "compact," is made and entered into by and between the participating member jurisdictions that enact this compact, referred to in this chapter as "party jurisdictions." The following states and provinces are eligible to become members of this compact: Connecticut, Maine, Massachusetts, New Brunswick, Newfoundland and Labrador, New Hampshire, Nova Scotia, Prince Edward Island, Quebec, Rhode Island and Vermont. [1999, c. 696, §1 (NEW).]

The purpose of this compact is to provide for mutual assistance between the party jurisdictions entering into this compact in managing any emergency or disaster when the governor or premier of the affected jurisdiction or jurisdictions asks for assistance, whether arising from natural disaster, technological hazard, man-made disaster or civil emergency aspects of resource shortages. [1999, c. 696, §1 (NEW).]

This compact also provides for mutual cooperation in emergency related exercises, testing or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party jurisdictions or subdivisions of party jurisdictions during emergencies, with such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of emergency forces by mutual agreement between the party jurisdictions. [1999, c. 696, §1 (NEW).]

#### SECTION HISTORY

1999, c. 696, §1 (NEW).

### §936. GENERAL IMPLEMENTATION - ARTICLE II

Each party jurisdiction entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each party jurisdiction further recognizes that there will be emergencies that require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency because few, if any, individual party jurisdictions have all the resources they need in all types of emergencies or the capability of delivering resources to areas where emergencies exist. [1999, c. 696, §1 (NEW).]

The prompt, full and effective utilization of resources of the participating party jurisdictions, including any resources on hand or available from any other source that are essential to the safety, care and welfare of the people in the event of any emergency or disaster declared by a party jurisdiction, must be the underlying principle on which all articles of this compact are understood. [1999, c. 696, §1 (NEW).]

On behalf of the governor of each state or premier of each province participating in the compact, the legally designated official who is assigned responsibility for emergency management is responsible for formulation of the appropriate interjurisdictional mutual aid plans and procedures necessary to implement this compact. [1999, c. 696, §1 (NEW).]

#### SECTION HISTORY

1999, c. 696, §1 (NEW).

## §937. PARTY JURISDICTION RESPONSIBILITIES - ARTICLE III

**1. Formulate plans and programs.** It is the responsibility of each party jurisdiction to formulate procedural plans and programs for interjurisdictional cooperation in the performance of the responsibilities listed in this section. In formulating such plans, and in carrying them out, the party jurisdictions, to the extent practical, shall:

A. Review individual party jurisdiction hazards analysis and, to the extent reasonably possible, determine all those potential emergencies the party jurisdictions might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster or emergency aspects of resource shortages; [1999, c. 696, §1 (NEW).]

B. Review party jurisdictions' individual emergency plans and develop a plan that will determine the mechanism for the interjurisdictional management and provision of assistance concerning any potential emergency; [1999, c. 696, §1 (NEW).]

C. Develop interjurisdictional procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans; [1999, c. 696, §1 (NEW).]

D. Assist in warning communities adjacent to or crossing jurisdictional boundaries; [1999, c. 696, §1 (NEW).]

E. Protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue and critical lifeline equipment, services and resources, both human and material; [1999, c. 696, §1 (NEW).]

F. Inventory and set procedures for the interjurisdictional loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and [1999, c. 696, §1 (NEW).]

G. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances over which the province or state has authority that restrict the implementation of the responsibilities described in this subsection. [1999, c. 696, §1 (NEW).]

[ 1999, c. 696, §1 (NEW) .]

**2. Request assistance.** The authorized representative of a party jurisdiction may request assistance of another party jurisdiction by contacting the authorized representative of that party jurisdiction. The provisions of this compact only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request must be confirmed in writing within 30 days of the verbal request. Requests must provide the following information:

A. A description of the emergency service function for which assistance is needed, including but not limited to: fire services, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services and search and rescue; [1999, c. 696, §1 (NEW).]

B. The amount and type of personnel, equipment, materials and supplies needed and a reasonable estimate of the length of time they will be needed; and [1999, c. 696, §1 (NEW).]

C. The specific place and time for staging of the assisting party's response and a point of contact at the location. [1999, c. 696, §1 (NEW).]

[ 1999, c. 696, §1 (NEW) .]

**3. Consultation between party jurisdictions' officials.** There must be frequent consultation between the party jurisdictions' officials who have assigned emergency management responsibilities and other appropriate representatives of the party jurisdictions and the federal governments, with free exchange of information, plans and resource records relating to emergency capabilities.

[ 1999, c. 696, §1 (NEW) .]

SECTION HISTORY

1999, c. 696, §1 (NEW) .

### **§938. LIMITATION - ARTICLE IV**

Any party jurisdiction requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms of this compact, except that it is understood that the party jurisdiction rendering aid may withhold resources to the extent necessary to provide reasonable protection for that party jurisdiction. Each party jurisdiction shall afford to the emergency forces of any party jurisdiction, while operating within its jurisdiction limits under the terms and conditions of this compact and under the control of an officer of the requesting party jurisdiction, the same powers, duties, rights, privileges and immunities as are afforded similar or like forces of the party jurisdiction in which they are performing emergency services. Emergency forces continue under the command and control of their regular leaders, but the organizational units come under the operational control of the emergency services authorities of the party jurisdiction receiving assistance. These conditions may be activated, as needed, by the party jurisdiction that is to receive assistance or commencement of exercises or training for mutual aid and continue as long as the exercises or training for mutual aid are in progress, the emergency or disaster remains in effect or loaned resources remain in the receiving party jurisdiction or jurisdictions, whichever is longer. [1999, c. 696, §1 (NEW) .]

SECTION HISTORY

1999, c. 696, §1 (NEW) .

### **§939. LICENSES AND PERMITS - ARTICLE V**

Whenever a person holds a license, certificate or other permit issued by any party jurisdiction to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party jurisdiction, such person is deemed to be licensed, certified or permitted by the party jurisdiction requesting assistance to render aid involving such skill to meet an emergency or disaster, subject to such limitations and conditions as the requesting party jurisdiction prescribes by executive order or otherwise. [1999, c. 696, §1 (NEW) .]

SECTION HISTORY

1999, c. 696, §1 (NEW) .

### **§940. LIABILITY - ARTICLE VI**

Any person or entity of a party jurisdiction rendering aid in another party jurisdiction pursuant to this compact is considered an agent of the requesting party jurisdiction for tort liability and immunity purposes. Any person or entity rendering aid in another party jurisdiction pursuant to this compact is not liable on account of any act or omission made in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this section does not include willful misconduct, gross negligence or recklessness. [1999, c. 696, §1 (NEW) .]

SECTION HISTORY

1999, c. 696, §1 (NEW) .



## **§941. SUPPLEMENTARY AGREEMENTS - ARTICLE VII**

Because it is probable that the pattern and detail of the machinery for mutual aid among 2 or more jurisdictions may differ from that among the party jurisdictions of this compact, this compact contains elements of a broad base common to all party jurisdictions, and nothing in this compact precludes any party jurisdiction from entering into supplementary agreements with another party jurisdiction or affects any other agreements already in force between party jurisdictions. Supplementary agreements may include, but are not limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies. [1999, c. 696, §1 (NEW).]

### SECTION HISTORY

1999, c. 696, §1 (NEW).

## **§942. WORKERS' COMPENSATION AND DEATH BENEFITS - ARTICLE VIII**

Each party jurisdiction shall provide for the payment of workers' compensation and death benefits to injured members of the emergency forces of that party jurisdiction and to representatives of deceased members of those forces if the members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own party jurisdiction. [1999, c. 696, §1 (NEW).]

### SECTION HISTORY

1999, c. 696, §1 (NEW).

## **§943. REIMBURSEMENT - ARTICLE IX**

Any party jurisdiction rendering aid in another party jurisdiction pursuant to this compact must, if requested, be reimbursed by the party jurisdiction receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with those requests. An aiding party jurisdiction may assume in whole or in part any such loss, damage, expense or other cost or may loan such equipment or donate such services to the receiving party jurisdiction without charge or cost. Any 2 or more party jurisdictions may enter into supplementary agreements establishing a different allocation of costs among those party jurisdictions. Expenses under section 942 are not reimbursable under this section. [1999, c. 696, §1 (NEW).]

### SECTION HISTORY

1999, c. 696, §1 (NEW).

## **§944. EVACUATION - ARTICLE X**

Each party jurisdiction shall prepare and maintain plans to facilitate the movement and reception of evacuees into or across its territory. After the termination of the emergency or disaster, the party jurisdiction from which the evacuees came shall assume the responsibility for the ultimate support of repatriation of such evacuees. [1999, c. 696, §1 (NEW).]

### SECTION HISTORY

1999, c. 696, §1 (NEW).

## §945. IMPLEMENTATION - ARTICLE XI

**1. Enactment.** This compact becomes operative immediately upon its adoption by any 2 of the states and provinces listed in section 935 and upon the approval or authorization of the United States Congress, if required. After it becomes operative, this compact becomes effective as to any other state or province upon its enactment by that state or province.

[ 1999, c. 696, §1 (NEW) .]

**2. Withdrawal from compact.** Any party jurisdiction may withdraw from this compact, but the withdrawal does not take effect until 30 days after the governor or premier of the withdrawing party jurisdiction has given notice in writing of such withdrawal to the governors or premiers of all other party jurisdictions. The action does not relieve the withdrawing party jurisdiction from obligations assumed under this compact prior to the effective date of withdrawal.

[ 1999, c. 696, §1 (NEW) .]

**3. Copy of compact.** Duly authenticated copies of this compact in the French and English languages and of such supplementary agreements as may be entered into must, at the time of their approval, be deposited with each of the party jurisdictions and with appropriate federal authorities.

[ 1999, c. 696, §1 (NEW) .]

### SECTION HISTORY

1999, c. 696, §1 (NEW).

## §946. SEVERABILITY - ARTICLE XII

This chapter is construed to effectuate the purposes stated in section 935. If any provision of this compact is declared unconstitutional or the applicability of the compact to any person or circumstances is held invalid, the constitutionality of the remainder of this chapter and the applicability of the chapter to other persons and circumstances is not affected. [1999, c. 696, §1 (NEW).]

### SECTION HISTORY

1999, c. 696, §1 (NEW).

## §947. INCONSISTENCY OF LANGUAGE - ARTICLE XIII

The validity of the arrangements and agreements consented to in this compact is not affected by any insubstantial difference in form or language as adapted by the various states and provinces. [1999, c. 696, §1 (NEW).]

### SECTION HISTORY

1999, c. 696, §1 (NEW).

## Chapter 16-B: UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT

### §949. SHORT TITLE

This chapter may be known and cited as "the Uniform Emergency Volunteer Health Practitioners Act." [2017, c. 396, §5 (NEW).]

#### SECTION HISTORY

2017, c. 396, §5 (NEW).

### §949-A. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2017, c. 396, §5 (NEW).]

**1. Disaster relief organization.** "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health services or veterinary services provided by volunteer health practitioners as long as the entity:

A. Is designated or recognized as a provider of those emergency or disaster relief services pursuant to a disaster response and recovery plan adopted by an agency of the Federal Government or the Maine Emergency Management Agency; or [2017, c. 396, §5 (NEW).]

B. Regularly plans and conducts its activities in coordination with an agency of the Federal Government, the Maine Emergency Management Agency or the Department of Health and Human Services. [2017, c. 396, §5 (NEW).]

[ 2017, c. 396, §5 (NEW) .]

**2. Emergency.** "Emergency" means an event or condition that is an actual or imminent civil emergency or disaster or an actual or threatened epidemic or public health threat that is the subject of an emergency proclamation pursuant to section 742 or an emergency declaration pursuant to Title 22, section 802.

[ 2017, c. 396, §5 (NEW) .]

**3. Emergency declaration.** "Emergency declaration" means a declaration or proclamation of emergency issued by a person authorized to do so under the laws of this State.

[ 2017, c. 396, §5 (NEW) .]

**4. Emergency Management Assistance Compact.** "Emergency Management Assistance Compact" means the interstate compact approved by the United States Congress in Public Law 104-321 (1996) and adopted by this State in chapter 16.

[ 2017, c. 396, §5 (NEW) .]

**5. Entity.** "Entity" means a person other than an individual.

[ 2017, c. 396, §5 (NEW) .]

**6. Health facility.** "Health facility" means an entity licensed under the laws of this State or another state to provide health services or veterinary services.

[ 2017, c. 396, §5 (NEW) .]

**7. Health practitioner.** "Health practitioner" means an individual licensed under the laws of this State or another state to provide health services or veterinary services.

[ 2017, c. 396, §5 (NEW) . ]

**8. Health services.** "Health services" means the provision of treatment, care, advice or guidance or other services or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

A. The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care; and

(2) Counseling, assessment, procedures or other services; [2017, c. 396, §5 (NEW) . ]

B. The sale or dispensing of a drug, a device, equipment or another item to an individual in accordance with a prescription; and [2017, c. 396, §5 (NEW) . ]

C. Funeral, cremation, cemetery or other mortuary services. [2017, c. 396, §5 (NEW) . ]

[ 2017, c. 396, §5 (NEW) . ]

**9. Host entity.** "Host entity" means an entity operating in this State that uses volunteer health practitioners to respond to an emergency.

[ 2017, c. 396, §5 (NEW) . ]

**10. International Emergency Management Assistance Compact.** "International Emergency Management Assistance Compact" means the mutual assistance compact described in chapter 16-A.

[ 2017, c. 396, §5 (NEW) . ]

**11. License.** "License" means authorization by a state to provide health services or veterinary services that are unlawful without the authorization. "License" includes authorization under the laws of this State to an individual to provide health services or veterinary services based upon a national certification issued by a public or private entity.

[ 2017, c. 396, §5 (NEW) . ]

**12. Person.** "Person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

[ 2017, c. 396, §5 (NEW) . ]

**13. Scope of practice.** "Scope of practice" means the extent of the authorization to provide health services or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.

[ 2017, c. 396, §5 (NEW) . ]

**14. State.** "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States or a Canadian province that is a party to the International Emergency Management Assistance Compact.

[ 2017, c. 396, §5 (NEW) . ]

**15. Veterinary services.** "Veterinary services" means the provision of treatment, care, advice or guidance or other services or supplies related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

A. Diagnosis, treatment or prevention of an animal disease, injury or other physical or mental condition by the prescription, administration or dispensing of vaccine, medicine, surgery or therapy; [ 2017, c. 396, §5 (NEW) . ]

B. Use of a procedure for reproductive management; and [ 2017, c. 396, §5 (NEW) . ]

C. Monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans. [ 2017, c. 396, §5 (NEW) . ]

[ 2017, c. 396, §5 (NEW) . ]

**16. Volunteer health practitioner.** "Volunteer health practitioner" means a health practitioner who provides health services or veterinary services while an emergency declaration is in effect, whether or not the practitioner receives compensation for those services. "Volunteer health practitioner" does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in this State, unless the practitioner is not a resident of this State and is employed by a disaster relief organization providing services in this State while an emergency declaration is in effect.

[ 2017, c. 396, §5 (NEW) . ]

#### SECTION HISTORY

2017, c. 396, §5 (NEW).

## §949-B. APPLICABILITY TO VOLUNTEER HEALTH PRACTITIONERS

This chapter applies only to volunteer health practitioners who are registered with a registration system that complies with section 949-D and who provide health services or veterinary services in this State for a host entity while an emergency declaration is in effect. [ 2017, c. 396, §5 (NEW) . ]

#### SECTION HISTORY

2017, c. 396, §5 (NEW).

## §949-C. REGULATION OF SERVICES DURING EMERGENCY

**1. Order regulating practice.** The Department of Health and Human Services, in coordination with the Maine Emergency Management Agency, may issue an order that limits, restricts or otherwise regulates the following while an emergency declaration is in effect:

A. The duration of practice by volunteer health practitioners; [ 2017, c. 396, §5 (NEW) . ]

B. The geographical areas in which volunteer health practitioners may practice; [ 2017, c. 396, §5 (NEW) . ]

C. The types of volunteer health practitioners who may practice; and [ 2017, c. 396, §5 (NEW) . ]

D. Any other matters necessary to coordinate effectively the provision of health services or veterinary services during the emergency. [2017, c. 396, §5 (NEW).]

[ 2017, c. 396, §5 (NEW) .]

**2. Inapplicability of Maine Administrative Procedure Act.** Notwithstanding the Maine Administrative Procedure Act, an order issued pursuant to subsection 1 may take effect immediately, without notice or comment, and is legally enforceable.

[ 2017, c. 396, §5 (NEW) .]

**3. Duties of host entity.** A host entity that uses volunteer health practitioners to provide health services or veterinary services in this State shall:

A. Consult and coordinate its activities with the Department of Health and Human Services or the Maine Emergency Management Agency to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and [2017, c. 396, §5 (NEW).]

B. Comply with other laws relating to the management of emergency health services or veterinary services. [2017, c. 396, §5 (NEW).]

[ 2017, c. 396, §5 (NEW) .]

#### SECTION HISTORY

2017, c. 396, §5 (NEW).

## §949-D. VOLUNTEER HEALTH PRACTITIONER REGISTRATION SYSTEMS

**1. Registration system requirements.** To qualify as a volunteer health practitioner registration system, a system must:

A. Accept applications for the registration of volunteer health practitioners before or during an emergency; [2017, c. 396, §5 (NEW).]

B. Include information about the licensure and good standing of health practitioners that is accessible by authorized persons; [2017, c. 396, §5 (NEW).]

C. Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this chapter; and [2017, c. 396, §5 (NEW).]

D. Meet one of the following conditions:

(1) Be an emergency system for advance registration of volunteer health care professionals established by a state and funded through the federal Department of Health and Human Services under Section 319I of the federal Public Health Service Act, 42 United States Code, Section 247d-7b (2017);

(2) Be a local unit consisting of trained and equipped emergency response, public health and medical personnel formed pursuant to Section 2801 of the federal Public Health Service Act, 42 United States Code, Section 300hh (2017);

(3) Be operated by a:

(a) Disaster relief organization;

(b) Licensing board;

(c) National or regional association of licensing boards or health practitioners;

(d) Health facility that provides comprehensive inpatient and outpatient health care services, including a tertiary care hospital; or

(e) Governmental entity; or

(4) Be designated by the Department of Health and Human Services, in coordination with the Maine Emergency Management Agency, as a registration system for the purposes of this chapter. [ 2017, c. 396, §5 (NEW). ]

[ 2017, c. 396, §5 (NEW) . ]

**2. Confirmation of registration.** While an emergency declaration is in effect, the Department of Health and Human Services or the Maine Emergency Management Agency, a person authorized to act on behalf of the Department of Health and Human Services or the Maine Emergency Management Agency or a host entity may confirm whether volunteer health practitioners utilized in this State are registered with a registration system that complies with subsection 1. Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

[ 2017, c. 396, §5 (NEW) . ]

**3. Notification by registration system.** Upon request of a person in this State authorized under subsection 2, or a similarly authorized person in another state, a registration system located in this State shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

[ 2017, c. 396, §5 (NEW) . ]

**4. Host entity discretion in selecting volunteers.** A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

[ 2017, c. 396, §5 (NEW) . ]

#### SECTION HISTORY

2017, c. 396, §5 (NEW).

## §949-E. RECOGNITION OF VOLUNTEER HEALTH PRACTITIONERS LICENSED IN OTHER STATES

**1. Authority to practice during emergency.** While an emergency declaration is in effect, a volunteer health practitioner registered with a registration system that complies with section 949-D and licensed and in good standing in the state upon which the practitioner's registration is based may practice in this State to the extent authorized by this chapter as if the practitioner were licensed in this State.

[ 2017, c. 396, §5 (NEW) . ]

**2. Disqualification based on professional discipline.** A volunteer health practitioner qualified under subsection 1 is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked or subject to an agency order limiting or restricting practice privileges or has been voluntarily terminated under threat of sanction.

[ 2017, c. 396, §5 (NEW) . ]

#### SECTION HISTORY

2017, c. 396, §5 (NEW).

## §949-F. NO EFFECT ON CREDENTIALING AND PRIVILEGING

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

A. "Credentialing" means obtaining, verifying and assessing the qualifications of a health practitioner to provide treatment, care or services in or for a health facility. [2017, c. 396, §5 (NEW).]

B. "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status and specialized skill. [2017, c. 396, §5 (NEW).]

[ 2017, c. 396, §5 (NEW) .]

**2. Health facility autonomy over credentialing and privileging.** This chapter does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

[ 2017, c. 396, §5 (NEW) .]

### SECTION HISTORY

2017, c. 396, §5 (NEW).

## §949-G. PROVISION OF VOLUNTEER HEALTH SERVICES OR VETERINARY SERVICES; LICENSEE DISCIPLINE

**1. Applicability of Maine scope of practice laws.** Subject to subsections 2 and 3, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts or other laws of this State.

[ 2017, c. 396, §5 (NEW) .]

**2. Applicability of scope of practice laws of state where practitioner is licensed.** Except as otherwise provided in subsection 3, this chapter does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this State would be permitted to provide the services.

[ 2017, c. 396, §5 (NEW) .]

**3. Order modifying or limiting services.** The Governor or the Governor's designee may issue an order that modifies or restricts the health services or veterinary services that volunteer health practitioners may provide pursuant to this chapter. Notwithstanding the Maine Administrative Procedure Act, an order issued pursuant to this subsection may take effect immediately, without notice or comment, and is legally enforceable.

[ 2017, c. 396, §5 (NEW) .]

**4. Additional restrictions imposed by host entity.** A host entity may restrict the health services or veterinary services that a volunteer health practitioner may provide pursuant to this chapter.

[ 2017, c. 396, §5 (NEW) .]



**5. Unauthorized practice.** A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification or restriction under this section or that a similarly licensed practitioner in this State would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification or restriction or that a similarly licensed practitioner in this State would not be permitted to provide a service if:

A. The practitioner knows the limitation, modification or restriction exists or that a similarly licensed practitioner in this State would not be permitted to provide the service; or [2017, c. 396, §5 (NEW) .]

B. From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification or restriction exists or that a similarly licensed practitioner in this State would not be permitted to provide the service. [2017, c. 396, §5 (NEW) .]

[ 2017, c. 396, §5 (NEW) .]

**6. Volunteer health practitioner discipline.** In addition to the authority granted by law of this State other than this chapter to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this State:

A. May discipline a health practitioner licensed in this State for conduct outside of this State in response to an out-of-state emergency; [2017, c. 396, §5 (NEW) .]

B. May discipline a health practitioner not licensed in this State for conduct in this State in response to an in-state emergency; and [2017, c. 396, §5 (NEW) .]

C. Shall report any discipline imposed upon a health practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed. [2017, c. 396, §5 (NEW) .]

[ 2017, c. 396, §5 (NEW) .]

**7. Factors to be considered by disciplinary authority.** In determining whether to impose discipline pursuant to subsection 6, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the health practitioner's scope of practice, education, training, experience and specialized skill.

[ 2017, c. 396, §5 (NEW) .]

#### SECTION HISTORY

2017, c. 396, §5 (NEW) .

## §949-H. RELATION TO OTHER LAWS

**1. Other laws unaffected.** This chapter does not limit the rights, privileges or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided in subsection 2, this chapter does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact or the International Emergency Management Assistance Compact.

[ 2017, c. 396, §5 (NEW) .]

**2. Exceptions; Emergency Management Assistance Compact and International Emergency Management Assistance Compact.** The Maine Emergency Management Agency, pursuant to section 784-A, the Emergency Management Assistance Compact and the International Emergency Management

Assistance Compact, may incorporate into the emergency forces of this State volunteer health practitioners who are not officers or employees of this State, a political subdivision of this State or a municipality or other local government within this State.

[ 2017, c. 396, §5 (NEW) .]

SECTION HISTORY

2017, c. 396, §5 (NEW).

### **§949-I. REGULATORY AUTHORITY**

The Department of Health and Human Services may adopt rules to implement this chapter. In doing so, the Department of Health and Human Services shall consult with and consider the recommendations of the Maine Emergency Management Agency and shall also consult with and consider rules adopted by similarly empowered agencies in other states to promote uniformity of application of this chapter and make the emergency response systems in the various states reasonably compatible. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2017, c. 396, §5 (NEW) .]

SECTION HISTORY

2017, c. 396, §5 (NEW).

### **§949-J. LIMITATIONS ON CIVIL LIABILITY FOR VOLUNTEER HEALTH PRACTITIONERS**

A volunteer health practitioner who provides health services or veterinary services in accordance with this chapter is immune from liability for injury or death arising from the provision of those services to the extent provided in Title 24, section 2904. [2017, c. 396, §5 (NEW) .]

SECTION HISTORY

2017, c. 396, §5 (NEW).

### **§949-K. UNIFORMITY OF APPLICATION AND CONSTRUCTION**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2017, c. 396, §5 (NEW) .]

SECTION HISTORY

2017, c. 396, §5 (NEW).

## Chapter 17: NUCLEAR EMERGENCY PLANNING

### §951. SHORT TITLE

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1999, c. 174, §4 (RP).

### §952. FINDINGS AND PURPOSE

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1999, c. 174, §4 (RP).

### §953. DEFINITIONS

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1999, c. 174, §4 (RP).

### §954. RADIOLOGICAL EMERGENCY PREPAREDNESS COMMITTEE

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 812, §287 (AMD). 1983, c. 816, §§B13,B19, B20 (AMD). 1985, c. 737, §§A107,108 (AMD). 1987, c. 764, (AMD). 1989, c. 503, §B173 (AMD). 1999, c. 174, §4 (RP).

### §955. MAINE NUCLEAR EMERGENCY PLANNING FUND

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1991, c. 375, §1 (AMD). 1999, c. 174, §4 (RP).

### §956. FUNDING

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 139, §1 (AMD). 1987, c. 630, §1 (AMD). 1987, c. 816, §KK25 (AMD). 1989, c. 364, §§1,2 (AMD). 1991, c. 375, §§2,3 (AMD). 1993, c. 102, §1 (AMD). 1995, c. 368, §X1 (AMD). 1999, c. 174, §4 (RP).

### §957. DISBURSEMENTS FROM FUND

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 139, §2 (AMD). 1987, c. 630, §2 (AMD). 1987, c. 816, §KK26 (RPR). 1989, c. 43, §1 (AMD). 1989, c. 364, §3 (AMD). 1991, c. 375, §4 (AMD). 1993, c. 102, §2 (AMD). 1999, c. 174, §4 (RP).

## **§958. BUDGET APPROVAL**

*(REPEALED)*

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1997, c. 424, §B7 (AMD). 1999, c. 174, §4 (RP).

## **§959. EMERGENCY ASSISTANCE**

*(REPEALED)*

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1999, c. 174, §4 (RP).

## **§960. EMERGENCY PLANNING AREA**

*(REPEALED)*

### SECTION HISTORY

1983, c. 472, §4 (NEW). 1983, c. 816, §B14 (RAL). 1987, c. 370, §19 (AMD). 1987, c. 519, §11 (RPR). 1987, c. 769, §A165 (RPR). 1999, c. 174, §4 (RP).

## **§961. REPORTING**

*(REPEALED)*

### SECTION HISTORY

1983, c. 472, §5 (NEW). 1983, c. 816, §B15 (RAL). 1991, c. 375, §§5,6 (AMD). 1999, c. 174, §4 (RP).

## Chapter 19: SABOTAGE PREVENTION

### §1001. SHORT TITLE

This chapter may be cited as the "Sabotage Prevention Act." [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §1002. RELATION TO OTHER STATUTES

All Acts and parts of Acts inconsistent with this chapter are suspended in their application to any proceedings under this chapter. If conduct prohibited by this chapter is made unlawful by another or other laws, the offender may be convicted for the violation of this chapter or of the other law or laws. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §1003. RIGHTS OF LABOR UNAFFECTED

Nothing in this chapter may be construed to impair, curtail or destroy the lawful rights of employees and their representatives to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to strike, to picket and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### §1004. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 460, §3 (NEW).]

**1. Highway.** "Highway" includes any private or public street, way or other place used for travel to or from property.

[ 1983, c. 460, §3 (NEW) .]

**2. Highway commissioners.** "Highway commissioners" means an individual, board or other body having authority under law to discontinue the use of the highway which it is desired to restrict or close to public use and travel.

[ 1983, c. 460, §3 (NEW) .]

**3. Public utility.** "Public utility" includes any pipe line, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, railway, railroad, airplane, transportation, communication or other system operated for public use regardless of ownership.

[ 1983, c. 460, §3 (NEW) .]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §1005. INTENTIONAL INJURY OR INTERFERENCE WITH PROPERTY

Whoever intentionally destroys, impairs, injures, interferes or tampers with real or personal property with reasonable grounds to believe that that person's act will hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, or with preparations and plans for emergency management, or with the execution of those preparations and plans under chapter 13 commits a Class B crime. [2001, c. 614, §27 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1991, c. 797, §18 (AMD). 2001, c. 614, §27 (AMD).

## §1006. INTENTIONAL DEFECTS

Whoever intentionally makes or causes to be made or omits to note on inspection any defect in any article or thing with reasonable grounds to believe that the article or thing is intended to be used in connection with the preparation of the United States or any of the states for defense or for war, or for the prosecution of war by the United States, or with preparations and plans for emergency management, or with the execution of those preparations and plans under chapter 13, or that the article or thing is one of a number of similar articles or things, some of which are intended so to be used, commits a Class B crime. [2001, c. 614, §27 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1991, c. 797, §18 (AMD). 2001, c. 614, §27 (AMD).

## §1007. CONSPIRATORS

If 2 or more persons conspire to commit any crime defined by this chapter, each of those persons is guilty of conspiracy which shall be a crime of the same class as the crime which those persons conspired to commit, whether or not any act was done in furtherance of the conspiracy. It shall not constitute defense or ground of suspension of judgement, sentence or punishment on behalf of a person prosecuted under this section that any of his fellow conspirators has been acquitted, has not been arrested or convicted, is not amenable to justice or has been pardoned or otherwise discharged before or after conviction. [1983, c. 460, §3 (NEW).]

### SECTION HISTORY

1983, c. 460, §3 (NEW).

## §1008. WITNESSES' PRIVILEGES

No person may be excused from attending and testifying, or producing any books, papers or other documents before any court, judicial officer, notary public, referee or grand jury upon any investigation, proceeding or trial, relating to a violation of this chapter or attempt to commit the violation, upon the grounds that the testimony or evidence required of that person by the State may tend to convict that person of a crime or to subject that person to a penalty or forfeiture. No person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which that person may so testify or produce evidence and no testimony so given or produced, may be received against that person, during any criminal investigation, proceeding or trial, except upon a prosecution for perjury or contempt of court based upon the giving or producing of that testimony. [1989, c. 502, Pt. C, §14 (AMD).]

### SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 736, §58 (AMD). 1989, c. 502, §C14 (AMD).

### **§1009. UNLAWFUL ENTRY ON PROPERTY**

Any individual, partnership, association, corporation, municipal corporation or state or any of its political subdivisions engaged in, or preparing to engage in, the manufacture, transportation or storage of any product to be used in the preparation of the United States or of any of the states for defense or for war, or in the prosecution of war by the United States, or with preparations and plans for emergency management, or with the execution of these preparations and plans under chapter 13, or the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any individual, partnership, association, corporation, municipal corporation or state or any of its political subdivisions operating a public utility, whose property, except where it fronts on water or where there are entrances for railway cars, vehicles, persons or things, is surrounded by a fence or wall, or a fence or wall and buildings, may post around that property at each gate, entrance, dock or railway entrance and every 100 feet of waterfront a sign reading "No Entry Without Permission." Any person who intentionally enters upon premises posted in that manner without the permission of the owner is guilty of a Class E crime. [2001, c. 614, §28 (AMD).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §28 (AMD).

### **§1010. QUESTIONING AND DETAINING SUSPECTED PERSONS**

Any peace officer or any person employed as watchman, guard or in a supervisory capacity on premises posted, as provided in section 1009, may stop any person found on any premises to which entry without permission is forbidden by section 1009 and may detain him for the purpose of questioning and may question him with respect to his name, address and business in that place. If the peace officer or employee has reason to believe from the answers of the person so interrogated that the person has no right to be in that place, the peace officer shall forthwith either release that person or arrest the person without a warrant on the charge of violating section 1009. The employee shall forthwith release the person or turn him over to a peace officer, who may arrest him without a warrant on the charge of violating section 1009. [1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

1983, c. 460, §3 (NEW).

### **§1011. CLOSING AND RESTRICTING USE OF HIGHWAY; PENALTY**

Any individual, partnership, association, corporation, municipal corporation or state or any of its political subdivisions engaged in or preparing to engage in the manufacture, transportation or storage of any product to be used in the preparation of the United States or any of the states for defense or for war, or in the prosecution of war by the United States, or with preparations and plans for emergency management, or with the execution of those preparations and plans under chapter 13, or in the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any individual, partnership, association, corporation, municipal corporation or state or any of its political subdivisions operating a public utility, who has property so used that the person or it believes will be endangered if public use and travel is not restricted or prohibited on one or more highways or parts of a highway or highways upon which the property abuts, may petition the highway commissioners of any city, town or county to close one or more of those highways or parts of a highway or highways to public use and travel or to restrict by order the use and travel upon one or more of the highways or parts of a highway or highways. [2001, c. 614, §29 (AMD).]

Upon receipt of the petition, the highway commissioners shall set a day for a hearing and publish notice of the hearing in a newspaper having general circulation in the city, town or county in which the property is located. The notice must be published at least 7 days prior to the date set for the hearing. If, after the hearing, the highway commissioners determine that the public safety and the safety of the property of the petitioner require, they shall, by suitable order, close to public use and travel, or reasonably restrict the use of and travel upon one or more of those highways or parts of one or more of those highways. The highway commissioners may issue written permits for travel over the closed or restricted highways to responsible and reputable

persons for such term, under such conditions and in such form as they may prescribe. Appropriate notices in letters at least 3 inches high must be posted conspicuously at each end of any highway closed or restricted by the order. The highway commissioners may at any time revoke or modify the order. [2001, c. 614, §29 (AMD).]

Whoever violates any order made under this section is guilty of a Class E crime. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §29 (AMD).



## Chapter 21: DAMS AND RESERVOIRS

### §1051. LEGISLATIVE POLICY

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §20 (AMD). 2001, c. 460, §2 (RP).

### §1052. DEFINITIONS

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §21 (AMD). 1987, c. 769, §A166 (AMD). 2001, c. 460, §2 (RP).

### §1053. ADMINISTRATION

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 769, §A167 (AMD). 2001, c. 460, §2 (RP).

### §1054. POWERS OF AGENCY

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 769, §A168 (AMD). 2001, c. 460, §2 (RP).

### §1055. EXEMPTIONS

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 490, §A8 (AMD). 2001, c. 460, §2 (RP).

### §1056. RIGHTS OF OWNER

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 460, §2 (RP).

### §1057. DAMAGES

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 769, §A169 (AMD). 2001, c. 460, §2 (RP).

## **§1058. RELIEF OF OBLIGATION**

*(REPEALED)*

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 460, §2 (RP).

## **§1059. VIOLATIONS**

*(REPEALED)*

### SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 460, §2 (RP).

## Chapter 22: DAM INSPECTION

### §1061. DEFINITIONS

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 2001, c. 460, §2 (RP).

### §1062. JURISDICTION

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 2001, c. 460, §2 (RP).

### §1063. DESIGN STANDARDS

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 2001, c. 460, §2 (RP).

### §1064. INSPECTORS OF DAMS

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 2001, c. 460, §2 (RP).

### §1065. INSPECTION OF DAMS

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 1997, c. 517, §1 (AMD). 1997, c. 517, §4 (AFF).  
1999, c. 71, §1 (AMD). 2001, c. 460, §2 (RP).

### §1066. ENFORCEMENT

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 2001, c. 460, §2 (RP).

### §1067. APPEAL

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 2001, c. 460, §2 (RP).

### §1068. ACCESS AND NOTIFICATION

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 2001, c. 460, §2 (RP).

### **§1069. EMERGENCY PLANS**

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 2001, c. 460, §2 (RP).

### **§1070. INSPECTION PETITION AND ORDER**

*(REPEALED)*

SECTION HISTORY

1989, c. 545, §1 (NEW). 2001, c. 460, §2 (RP).

### **§1071. NOTICE OF TRANSFER OF OWNERSHIP**

*(REPEALED)*

SECTION HISTORY

1999, c. 71, §2 (NEW). 2001, c. 460, §2 (RP).

### **§1080. ESTABLISHMENT OF COMMISSION**

*(REPEALED)*

SECTION HISTORY

1997, c. 236, §2 (NEW). 2001, c. 460, §2 (RP).

## Chapter 23: REMOVAL OF ICE JAMS

### **§1101. DEFINITIONS**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 209, (RP).

### **§1102. DUTIES OF THE DIRECTOR**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 209, (RP).

### **§1103. DUTIES OF LOCAL ORGANIZATION FOR CIVIL EMERGENCY PREPAREDNESS**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 209, (RP).

### **§1104. PROCEDURE**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 209, (RP).

### **§1105. PROJECT REVIEW**

*(REPEALED)*

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 209, (RP). 1987, c. 370, §22 (AMD).  
1987, c. 769, §A170 (RP).

## Chapter 24: DAM SAFETY

### §1111. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [ 2001, c. 460, §3 (NEW) . ]

**1. Dam.** "Dam" means any artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, that impounds or diverts water, and that:

A. Is 25 feet or more in height from the natural bed of the watercourse measured at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier to the maximum water storage elevation and impounds at least 15 acre-feet of water; or [ 2001, c. 460, §3 (NEW) . ]

B. Is 6 feet or more in height from the natural bed of the watercourse measured at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier to the maximum water storage elevation and has an impounding capacity at maximum water storage elevation of 50 acre-feet or more. [ 2001, c. 460, §3 (NEW) . ]

[ 2001, c. 460, §3 (NEW) . ]

**2. Commissioner.** "Commissioner" means the Commissioner of Defense, Veterans and Emergency Management.

[ 2001, c. 460, §3 (NEW) . ]

**3. Emergency.** "Emergency" means breaches and all conditions leading to or causing a breach, overtopping or any other condition in a dam and its appurtenant structures that may be construed as unsafe or threatening to life and property.

[ 2001, c. 460, §3 (NEW) . ]

**4. Emergency situation.** "Emergency situation" means a situation determined by the commissioner, after consultation with other state and federal agencies if time permits, to present a potential but real and impending danger to life, limb or property because of flooding or potential and imminent flooding and includes a situation that the Governor declares to be an emergency pursuant to section 742.

[ 2001, c. 460, §3 (NEW) . ]

**5. Emergency action plan.** "Emergency action plan" means a set of written instructions or guidelines for use by public officials that recommends actions that, when implemented, will minimize the effects of a dam failure on people and property.

[ 2001, c. 460, §3 (NEW) . ]

**6. Hazard potential.** "Hazard potential" means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the dam or misoperation of the dam or appurtenances. The hazard potential classification of a dam does not reflect in any way on the current condition of the dam and its appurtenant structures. The classifications are as follows:

A. High hazard potential dam. "High hazard potential dam" means a dam assigned the high hazard potential classification where failure or misoperation will probably cause loss of human life; [ 2001, c. 460, §3 (NEW) . ]

**B. Low hazard potential dam.** "Low hazard potential dam" means a dam assigned the low hazard potential classification where failure or misoperation results in no probable loss of human life and low economic and environmental losses. Losses are principally limited to the owner's property; and [ 2001, c. 460, §3 (NEW). ]

**C. Significant hazard potential dam.** "Significant hazard potential dam" means a dam assigned the significant hazard potential classification where failure or misoperation results in no probable loss of human life but can cause major economic loss, environmental damage or disruption of lifeline facilities or affect other concerns. Significant hazard potential dams are often located in predominantly rural or agricultural areas but could be located in areas with population and significant infrastructure. [ 2001, c. 460, §3 (NEW). ]

[ 2001, c. 460, §3 (NEW) . ]

**7. Necessary remedial measure.** "Necessary remedial measure" means any repair or hazard-reducing measure relating to a structural component or operation of a dam needed to mitigate a specific condition at the dam that constitutes a threat to public safety.

[ 2001, c. 460, §3 (NEW) . ]

**8. Person.** "Person" means any individual, firm, association, partnership, corporation, trust, municipality, quasi-municipal corporation, state department, federal department or other legal entity.

[ 2001, c. 460, §3 (NEW) . ]

**9. Public safety.** "Public safety" or "safety of the public" means protection of life, health or property from any condition, event or action at a dam that might compromise the safety, stability or integrity of the dam or its ability to function safely.

[ 2001, c. 460, §3 (NEW) . ]

**10. State dam inspector.** "State dam inspector" means an inspector appointed or hired under section 1117.

[ 2001, c. 460, §3 (NEW) . ]

#### SECTION HISTORY

2001, c. 460, §3 (NEW).

## §1112. ADMINISTRATION

The department shall administer this chapter. In carrying out the provisions of this chapter, the department shall consult as appropriate with other state agencies, including the Department of Agriculture, Conservation and Forestry, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Department of Public Safety, the Department of Transportation and the Maine Land Use Planning Commission, for their aid and assistance. [ 2011, c. 655, Pt. HH, §3 (AMD); 2011, c. 655, Pt. HH, §7 (AFF); 2011, c. 657, Pt. W, §5 (REV); 2011, c. 682, §38 (REV). ]

#### SECTION HISTORY

2001, c. 460, §3 (NEW). 2009, c. 561, §35 (AMD). 2011, c. 655, Pt. HH, §3 (AMD). 2011, c. 655, Pt. HH, §7 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §38 (REV).

## §1113. DUTIES OF THE DEPARTMENT

The department shall inspect existing dams and reservoirs to determine their hazard potential, review the design and construction of new and reconstructed dams, assist dam owners in developing emergency action plans to minimize the effects of dam failure and take all necessary actions in emergency situations of probable dam failure in order to protect life and property. [2001, c. 460, §3 (NEW).]

Except for the Federal Government, a person may not exercise any authority over the emergency regulation or supervision of any dams or reservoirs in the State when that exercise would conflict with the powers and authority vested in the department. [2001, c. 460, §3 (NEW).]

### SECTION HISTORY

2001, c. 460, §3 (NEW).

## §1114. POWERS OF THE DEPARTMENT

**1. Rules.** In accordance with Title 5, chapter 375, subchapter II, the department may adopt, modify or repeal rules for carrying out this chapter. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[ 2001, c. 460, §3 (NEW) .]

**2. Emergency situation.** When an emergency situation arises, the commissioner shall warn the public of the emergency and, notwithstanding any other provision of law, shall take all actions necessary to protect life and property, which may include, but are not limited to, the following:

- A. Taking full charge and control of any dam or reservoir; [2001, c. 460, §3 (NEW).]
- B. Lowering the water level by releasing water from the reservoir; [2001, c. 460, §3 (NEW).]
- C. Completely emptying the reservoir; [2001, c. 460, §3 (NEW).]
- D. Breaching or removing the dam itself; and [2001, c. 460, §3 (NEW).]
- E. Taking other necessary steps to safeguard life and property. [2001, c. 460, §3 (NEW).]

[ 2001, c. 460, §3 (NEW) .]

**3. Investigations.** For the purpose of enabling it to make decisions as compatible as possible with economy and protection of life and property and for the purpose of determining compliance with this chapter, the department may make necessary investigations and inspections. In making investigations and inspections required or authorized by this chapter, the department or its representatives may, as necessary in emergency situations, enter upon public or private property or in nonemergency situations secure administrative warrants from any District Court Judge or Superior Court Justice for the purpose of gaining entry onto private property.

[ 2001, c. 460, §3 (NEW) .]

**4. Injunction; civil or criminal proceedings.** In the event of violation of any of the provisions of this chapter or of any rule, order or decision of the department, the department may institute injunctive proceedings or other civil action as provided in this chapter.

[ 2001, c. 460, §3 (NEW) .]

### SECTION HISTORY

2001, c. 460, §3 (NEW).



## §1115. JURISDICTION

The inspection of and design standards for all dams are under the sole jurisdiction of the department, except that the department does not have jurisdiction over any dam licensed or inspected by any department of the Federal Government or by the International Joint Commission. [2001, c. 460, §3 (NEW).]

### SECTION HISTORY

2001, c. 460, §3 (NEW).

## §1116. DESIGN STANDARDS

All new dams that reasonably will be classified as high or significant hazard potential dams must be designed, constructed or reconstructed under the supervision of a registered professional engineer. Prior to construction, the dam owner shall provide a copy of the plans and specifications to the department. [2001, c. 460, §3 (NEW).]

### SECTION HISTORY

2001, c. 460, §3 (NEW).

## §1117. INSPECTORS OF DAMS

The commissioner shall appoint or hire one or more dam inspectors who are licensed as professional engineers under Title 32, chapter 19 and who are experienced in the inspection and design of dams. [2001, c. 460, §3 (NEW).]

### SECTION HISTORY

2001, c. 460, §3 (NEW).

## §1118. DAM HAZARD EVALUATION

**1. Evaluation.** The commissioner shall evaluate all dams to assign or reassign a hazard potential classification in accordance with the following schedule:

- A. New or reconstructed dams, within 6 months of construction or reconstruction; [2001, c. 460, §3 (NEW).]
- B. All other dams, at least once every 12 years; [2013, c. 146, §19 (AMD).]
- C. Any dam, within 60 days of a request for an evaluation from the dam owner, the municipality in which the dam is located or the emergency management director of the county in which the dam is located; and [2013, c. 146, §19 (AMD).]
- D. At any time a dam for which, in the judgment of the commissioner, such an evaluation is appropriate. [2001, c. 460, §3 (NEW).]

Notwithstanding the schedule of this subsection, the commissioner shall evaluate the hazard classification of a significant or high hazard potential dam within 30 days of receipt by the commissioner of a notice of transfer of ownership of the dam as required under section 1128 unless the dam has been evaluated under this subsection within 4 years preceding the notice of transfer of ownership.

Until the commissioner assigns or reassigns a hazard potential classification, a dam retains the hazard potential classification assigned in the 1981 United States Army Corps of Engineers' Inventory of Dams in the United States.

[2013, c. 146, §19 (AMD).]

**2. Factors considered.** Before assigning a dam a hazard potential classification, the commissioner shall consider the potential risk to public safety and property that may result from the failure or operation of the dam. In addition, when reassigning a hazard potential classification, the commissioner shall review any changes in upstream and downstream conditions since the last hazard classification evaluation.

[ 2001, c. 460, §3 (NEW) .]

**3. Hazard report.** Before the commissioner assigns or reassigns a dam hazard potential classification, a state dam inspector shall visually inspect that dam and its upstream and downstream environs and provide a report to the commissioner recommending a hazard classification for that dam. The commissioner shall provide a copy of the report by certified mail to the dam owner, lessee or other person in control of the dam, to the municipality in which the dam is located and to the emergency management director of the county in which the dam is located. The dam owner, lessee or other person in control of the dam must notify the commissioner within 20 days of receipt of the report if the dam owner, lessee or other person in control of the dam disagrees with the recommended hazard classification and must file within 3 months of receipt of the commissioner's classification the basis of the appeal with the commissioner. The commissioner may extend the 3 month period for good cause shown, but not more than an additional 3 months. The commissioner shall consider the evidence presented by the dam owner, lessee or other person in control of the dam as well as the evidence of the state inspector before issuing a final determination.

[ 2001, c. 460, §3 (NEW) .]

#### SECTION HISTORY

2001, c. 460, §3 (NEW). 2013, c. 146, §19 (AMD).

## §1119. DAM CONDITION INSPECTION

**1. Inspections.** A state dam inspector shall conduct an inspection of all high and significant hazard potential dams to determine whether the integrity, structural stability, function or operation of those dams constitutes a threat to public safety, in accordance with the following schedule:

- A. All significant hazard potential dams, at least once every 6 years; [ 2013, c. 146, §20 (AMD) .]
- B. All high hazard potential dams, at least once every 6 years; [ 2013, c. 146, §20 (AMD) .]
- C. Any dam, within 60 days of a request for an inspection from the dam owner or the municipality in which the dam is located; and [ 2013, c. 146, §20 (AMD) .]
- D. At any time any dam that may, in the judgment of the commissioner, constitute a potential risk to public safety. [ 2001, c. 460, §3 (NEW) .]

Notwithstanding the schedule outlined in this subsection, a state dam inspector shall conduct an inspection of a significant or high hazard potential dam within 30 days of receipt by the commissioner of a notice of transfer of ownership of the dam as required under section 1128 unless the dam has been inspected under this subsection within 4 years preceding the notice of transfer of ownership.

[ 2013, c. 146, §20 (AMD) .]

**2. Condition report.** After the on-site dam inspection, a state dam inspector shall provide a condition report to the commissioner detailing the operation and material condition of the dam and recommending all necessary remedial measures. The commissioner shall send a copy of the state dam inspector's condition report by certified mail to the dam owner, lessee or other person in control of the dam, the municipality in which the dam is located and the emergency management director of the county in which the dam is located if the condition report recommends any necessary remedial measures. The dam owner, lessee or other person in control of the dam must notify the commissioner within 20 days of receipt of the report if the owner disagrees with the findings and recommendations of the report. The dam owner, lessee or other person in control

of the dam must provide the basis of disagreement to the commissioner within 3 months of receipt of the inspector's report. The dam owner, lessee or other person in control of the dam may apply for and be granted an extension of this deadline for good cause, but not for more than an additional 3 months.

[ 2001, c. 460, §3 (NEW) .]

**3. Review conference.** After receiving the inspector's report and prior to issuing any dam safety order, the commissioner shall hold a review conference and shall invite the emergency management director of the county in which the dam is located to the review conference as well as representatives from appropriate state agencies, which may include the Department of Agriculture, Conservation and Forestry, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Department of Public Safety, the Department of Transportation and the Maine Land Use Planning Commission, to discuss the public safety, environmental, economic and other concerns relating to the dam and the necessary remedial measures under consideration. A state dam inspector shall attend the review conference. The commissioner shall maintain a written record of the conference and shall make a copy of this record available to all parties participating in the conference.

[ 2011, c. 655, Pt. HH, §4 (AMD); 2011, c. 655, Pt. HH, §7 (AFF); 2011, c. 657, Pt. W, §5 (REV); 2011, c. 682, §38 (REV) .]

**4. Order.** The commissioner shall consider the inspector's report, the evidence presented by the dam owner, lessee or other person in control of the dam and the record from the review conference before issuing a dam safety order directing that necessary remedial measures be undertaken by the dam owner, lessee or other person in control of the dam. The commissioner may issue such an order only if the commissioner determines that the integrity, structural stability, function or operation of the dam constitutes a threat to public safety. Necessary remedial measures may include, but are not limited to:

- A. Breach or removal of the dam; [2001, c. 460, §3 (NEW) .]
- B. Repair or maintenance of the dam in a specified manner; [2001, c. 460, §3 (NEW) .]
- C. Operation of the dam in a specified manner; [2001, c. 460, §3 (NEW) .]
- D. Preparation of and adherence to any emergency action that is approved by the commissioner; and [2001, c. 460, §3 (NEW) .]
- E. Maintenance of appropriate records relating to water levels, dam operation and dam maintenance. [2001, c. 460, §3 (NEW) .]

[ 2001, c. 460, §3 (NEW) .]

#### SECTION HISTORY

2001, c. 460, §3 (NEW). 2009, c. 561, §36 (AMD). 2011, c. 655, Pt. HH, §4 (AMD). 2011, c. 655, Pt. HH, §7 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §38 (REV). 2013, c. 146, §20 (AMD).

## §1120. ENFORCEMENT

The commissioner may commence an action to enjoin the violation of any provision of this chapter. The commissioner may enforce any order by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order. [2001, c. 460, §3 (NEW) .]

The owners, lessees or persons in control of the dam are jointly and severally liable for any costs incurred by the department in carrying out its responsibilities under section 1114, subsection 2 or in enforcing any order. If the owners, lessees or persons in control of the dam refuse to comply or do not fully comply with

the department's order, the department shall initiate a civil action against the owners, lessees or other persons in control of the dam for damages in the amount of the costs incurred by the department in enforcing its order. [2001, c. 460, §3 (NEW).]

## SECTION HISTORY

2001, c. 460, §3 (NEW).

**§1121. APPEAL**

Any person aggrieved by an order of the commissioner may appeal to the Superior Court under Title 5, chapter 375, subchapter VII. [2001, c. 460, §3 (NEW).]

## SECTION HISTORY

2001, c. 460, §3 (NEW).

**§1122. EXEMPTIONS**

Dams licensed by or subject to the jurisdiction of the Federal Energy Regulatory Commission are exempt from this chapter. [2001, c. 460, §3 (NEW).]

## SECTION HISTORY

2001, c. 460, §3 (NEW).

**§1123. RIGHTS OF OWNER**

This chapter may not be construed to deprive any owner of recourse to the court in which that owner may be entitled to relief under the laws of this State. [2001, c. 460, §3 (NEW).]

## SECTION HISTORY

2001, c. 460, §3 (NEW).

**§1124. IMMUNITY**

An action may not be brought against the State, the department or its agents or employees for any action taken or failure to take action pursuant to this chapter. [2001, c. 460, §3 (NEW).]

## SECTION HISTORY

2001, c. 460, §3 (NEW).

**§1125. RELIEF OF OBLIGATION**

This chapter may not be construed as relieving a person of duties, responsibilities or liabilities imposed by any other law, regulation, municipal ordinance or rule of law, including, but not limited to, the need to obtain permits or other approvals required to authorize repairs or other remedial measures at a dam and the need to comply with the terms and conditions of any outstanding water level or dam release order, except in an emergency situation as defined by this chapter. [2001, c. 460, §3 (NEW).]

## SECTION HISTORY

2001, c. 460, §3 (NEW).

## §1126. ACCESS AND NOTIFICATION

**1. Department access.** A state dam inspector and any department staff member must have full access to any dam site under the commissioner's jurisdiction for the purpose of conducting an inspection or enforcing an order under this chapter subject to the Maine Rules of Civil Procedure, Rule 80E.

[ 2001, c. 460, §3 (NEW) .]

**2. Owners, lessees; necessary access.** The owners, lessees or persons in control of a dam must have access over land abutting the dam site owned by others if the access, including the passage of vehicles, machinery and equipment, is reasonably necessary to comply with an order issued under this chapter. In passing over land owned by abutters, the owners, lessees or persons in control of a dam shall make every effort to minimize the intrusion, shall restore the land to its preexisting condition to the maximum extent practicable and are liable to the abutters for all property damage caused by their activities on the abutters' land. The abutters may not be held liable to any person for any personal injuries or property damage arising from the crossing of their land by the owners, lessees or persons in control of a dam.

[ 2001, c. 460, §3 (NEW) .]

### SECTION HISTORY

2001, c. 460, §3 (NEW).

## §1127. EMERGENCY ACTION PLANS

Within 6 months after the determination of classification, the owner of a dam under the commissioner's jurisdiction that is classified as high or significant hazard potential shall prepare an emergency action plan, which must be updated every 2 years. Such emergency action plans must be reviewed for adequacy by the department. Emergency plans must follow a model plan supplied by the department. All emergency action plans must be available and on file at the appropriate local and county government offices and at the department. [2001, c. 460, §3 (NEW).]

### SECTION HISTORY

2001, c. 460, §3 (NEW).

## §1128. NOTICE OF TRANSFER OF OWNERSHIP

Forty-five days prior to any change of ownership of a dam, whether by sale, lease or gift, the owner or owners of a dam classified as a high or significant hazard potential dam shall provide in writing to the commissioner the name and address of the prospective new owner or owners along with any plan that the prospective owner has with regard to maintaining competent operations and correcting unsafe conditions, if any. For purposes of this section, "competent operations" means properly and safely maintaining the dam and ensuring compliance with all safety, environmental and water level rules or orders. [2001, c. 460, §3 (NEW) .]

### SECTION HISTORY

2001, c. 460, §3 (NEW).

## §1129. VIOLATIONS

In addition to any other forfeitures or penalties provided by law, a person who violates any provisions of this chapter or any rule or order adopted, promulgated or issued under this chapter is subject to a civil penalty as assessed by the commissioner of not less than \$100 nor more than \$5,000 for each day that the violation continues. The penalty is payable to the State, to be recovered in a civil action. [ 2001, c. 460, §3 (NEW) . ]

### SECTION HISTORY

2001, c. 460, §3 (NEW) .

## §1130. DAM REPAIR AND RECONSTRUCTION FUND

**1. Fund established.** The Dam Repair and Reconstruction Fund, referred to in this section as the "fund," is established within the department. The department shall administer the fund and make low-interest loans from the fund for purposes pursuant to this section. The department may seek assistance from the Maine Municipal Bond Bank in administering the fund.

[ 2011, c. 112, §3 (AMD) . ]

**2. Purposes.** The department may use the fund to provide low-interest loans to municipalities and quasi-municipal corporations or districts for engineering, legal and construction costs involved in acquiring title to, establishing a long-term management plan for, repairs to, reconstruction of, breaching of or removal of a dam or to pay emergency costs incurred for actions taken pursuant to section 1114. For the purposes of this section, "municipality" has the same meaning as set out in Title 30-A, section 5903, subsection 7-A and "quasi-municipal corporation or district" has the same meaning as set out in Title 30-A, section 2351, subsection 4.

[ 2011, c. 112, §4 (AMD) . ]

**3. Rulemaking.** The department shall adopt rules to implement this section, including criteria and procedures for the application for and award of low-interest loans from the fund and for repayment of loans to the fund. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[ 2001, c. 460, §3 (NEW) . ]

**4. Nonlapsing.** Any balance in the fund at the end of the fiscal year may not lapse but must be carried forward to the next fiscal year.

[ 2001, c. 460, §3 (NEW) . ]

### SECTION HISTORY

2001, c. 460, §3 (NEW). 2007, c. 167, §12 (AMD). 2011, c. 112, §§3, 4 (AMD) .

## §1131. ESTABLISHMENT OF COMMISSION

**1. Establishment of commission.** The River Flow Advisory Commission, as established by Title 5, section 12004-G, subsection 13-E and referred to in this section as the "commission," shall act as a technical advisory commission to the department and the Governor's office on issues of flow of the State's rivers and streams. The commission shall also facilitate communication of river flow data between dam operators, river

basin managers, state agencies, the United States Geological Survey and the National Weather Service during floods and droughts and shall administer the State's hydrologic monitoring program in cooperation with the United States Geological Survey.

[ 2001, c. 662, §99 (NEW) .]

**2. Membership.** The commission is composed of these members:

A. The Director of the Maine Emergency Management Agency or the director's designee; [2003, c. 404, §11 (AMD).]

B. The State Geologist or the State Geologist's designee; [2001, c. 662, §99 (NEW).]

C. The Commissioner of Agriculture, Conservation and Forestry or the commissioner's designee; [2001, c. 662, §99 (NEW); 2011, c. 657, Pt. W, §6 (REV).]

D. The Commissioner of Environmental Protection or the commissioner's designee; [2001, c. 662, §99 (NEW).]

E. The Commissioner of Inland Fisheries and Wildlife or the commissioner's designee; [2001, c. 662, §99 (NEW).]

F. The Commissioner of Marine Resources or the commissioner's designee; [2001, c. 662, §99 (NEW).]

G. [2011, c. 655, Pt. HH, §7 (AFF); 2011, c. 655, Pt. HH, §5 (RP).]

H. The Commissioner of Transportation or the commissioner's designee; [2001, c. 662, §99 (NEW).]

I. The District Chief of the United States Geological Survey Water Resources Division Maine District Office; [2001, c. 662, §99 (NEW).]

J. The Meteorologists-in-Charge of the National Weather Service Forecast Offices in this State or the designee of the Meteorologists-in-Charge; [2003, c. 404, §12 (AMD).]

K. Representatives from private commerce and industry, including, but not limited to, the major hydroelectric power generators, as determined by the cochairs of the commission; [2003, c. 404, §12 (AMD).]

L. A representative of the public, appointed by the Governor; [2003, c. 404, §12 (AMD).]

M. The Commissioner of Health and Human Services or the commissioner's designee; and [2003, c. 404, §13 (NEW); 2003, c. 404, Pt. B, §7 (REV).]

N. The director of the Senator George J. Mitchell Center for Environmental and Watershed Research at the University of Maine, or the director's designee. [2003, c. 404, §13 (NEW).]

[ 2011, c. 655, Pt. HH, §5 (AMD); 2011, c. 655, Pt. HH, §7 (AFF); 2011, c. 657, Pt. W, §6 (REV) .]

**3. Chair.** The District Chief of the United States Geological Survey Water Resources Division Maine District Office and the Director of the Maine Emergency Management Agency or the director's designee shall act as cochairs of the commission.

[ 2003, c. 404, §14 (AMD) .]

**4. Terms of office.** The term of office of the public member is 5 years. The public member may be removed from office for cause by the Governor. Members from the State Government or Federal Government shall serve a term coincident with their governmental position. Members from private commerce and industry serve a term as determined by the respective entities that they represent.

[ 2003, c. 404, §14 (AMD) .]

**5. Voting.** A quorum of at least 7 members must be present for voting.

[ 2001, c. 662, §99 (NEW) .]

**6. Administrative provision.** The Maine Emergency Management Agency shall administer the affairs and activities of the commission.

[ 2001, c. 662, §99 (NEW) .]

**7. Records.** The commission shall keep accurate records of its proceedings and shall file them with the Maine Emergency Management Agency.

[ 2001, c. 662, §99 (NEW) .]

**8. Compensation.** Members of the commission are not entitled to receive compensation.

[ 2001, c. 662, §99 (NEW) .]

**9. Meetings.** The commission shall meet at least once per calendar year at the call of either of the cochairs to review hydrologic conditions prior to the spring snowmelt and runoff for the purpose of issuing an advisory statement on the potential for major river flooding. Either of the cochairs may call additional meetings as needed.

[ 2001, c. 662, §99 (NEW) .]

**10. Powers and duties.** The commission has the power and duty only to:

A. Advise the department and the Governor on issues of flow within the State's rivers and streams;

[2001, c. 662, §99 (NEW).]

B. Assist in communication of river flow data between dam operators, river basin managers, state agencies and federal agencies; and [2001, c. 662, §99 (NEW).]

C. Administer the State's cooperative hydrologic monitoring program in cooperation with the United States Geological Survey. [2001, c. 662, §99 (NEW).]

[ 2001, c. 662, §99 (NEW) .]

#### SECTION HISTORY

2001, c. 662, §99 (NEW). 2003, c. 404, §§11-14 (AMD). 2003, c. 689, §B7 (REV). 2011, c. 655, Pt. HH, §5 (AMD). 2011, c. 655, Pt. HH, §7 (AFF). 2011, c. 657, Pt. W, §6 (REV).



## Chapter 25: WOMEN VETERANS

### §1151. ADVISORY COMMISSION ON WOMEN VETERANS

*(REPEALED)*

#### SECTION HISTORY

1997, c. 742, §2 (NEW). 2011, c. 380, Pt. LLLL, §§1, 2 (AMD). MRSA T. 37-B, §1151, sub-§11 (RP).

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