

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

M
H. OF S.

L.D. 1765

DATE: 4-12-04

(Filing No. H-887)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1287, L.D. 1765, Bill, "An Act To Clarify the Responsibilities under the Adult Protective Services Act"

Amend the bill by inserting after the enacting clause and before section 1 the following:

'Sec. 1. 22 MRSA §3471, as amended by PL 1991, c. 711, §1, is further amended to read:

§3471. Declaration of policy and legislative intent

The Legislature recognizes that many adult citizens of the State, because of incapacitation or dependency, are unable to manage their own affairs or to protect themselves from abuse, neglect or exploitation. Often these persons ~~cannot~~ can not find others able or willing to render assistance. The Legislature intends, through this Act, to establish a program of protective services designed to fill this need and to ~~assure~~ ensure its availability to all incapacitated and dependent adults who are faced with abuse, neglect, exploitation or the substantial risk of abuse, neglect or exploitation. It is also the intent of the Legislature to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's need for services and to require that due process be followed in imposing those restrictions. Any requirements for disclosure of information contained in this chapter do not supersede federal law if federal law prohibits the disclosure of such information in the manner as set forth in this chapter.'

COMMITTEE AMENDMENT

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1287, L.D. 1765

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48

Further amend the bill in section 8 by striking out all of first 3 lines (page 5, lines 33 to 35 in L.D.) and inserting in their place the following:

'Sec. 8. 22 MRSA §3477, sub-§1, as amended by PL 2003, c. 599, §7 and affected by §9, is repealed and the following enacted in its place:'

Further amend the bill by inserting after section 9 the following:

'Sec. 10. 22 MRSA §3477, sub-§3, as enacted by PL 1981, c. 705, Pt. E, §2, is amended to read:

3. Confidentiality in case of treatment of individual suspected of causing abuse, neglect or exploitation. This section does not require any person acting in ~~their~~ that person's professional capacity to report when all of the following requirements are met:

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of causing the abuse, neglect or exploitation;

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and

C. In the opinion of the person required to report, the abused, neglected or exploited adult's life or health is not immediately threatened.

Sec. 11. 22 MRSA §3477, sub-§4 is enacted to read:

4. Confidentiality in case of treatment of individual suspected of being abused, neglected or exploited. This section does not require any person acting in that person's professional capacity to report when all of the following requirements are met:

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of being abused, neglected or exploited;

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and

COMMITTEE AMENDMENT

R. of S.

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48

C. In the opinion of the person required to report, the individual is not incapacitated and the individual's life or health is not immediately threatened.'

Further amend the bill by striking out all of section 13 and inserting in its place the following:

'Sec. 13. 22 MRSA §3480-A is enacted to read:

§3480-A. Confidential communications

The confidential quality of communications under section 1711-C, Title 24-A, section 4224 and Title 32, sections 1092-A and 7005 is abrogated to the extent allowable under federal law in relation to required reporting or cooperating with the department in an investigation or other protective activity under this chapter. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 3474.'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment adds language to the adult protective services program policy and legislative intent provisions to make it clear that federal confidentiality protections supersede conflicting state requirements to report abuse, neglect or exploitation of incapacitated or dependent adults.

Current law gives a professional treating an individual who is known or suspected of causing abuse, neglect or exploitation of an incapacitated or dependent adult discretion as to whether to make a report to the Department of Human Services if certain requirements are met. This amendment extends that discretion in situations in which the individual being treated is the known or suspected victim of the abuse, neglect or exploitation. The report is not required if the same requirements are satisfied and, in the professional's opinion, the individual is not incapacitated.

This amendment abrogates the confidential quality of communications provided by statute with regard to hospitals, health maintenance organizations, dentists and social workers to the extent authorized under federal law in relation to required reporting or cooperating with the department in an investigative

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1287, L.D. 1765

or other protective activity. Information received can not be further disclosed except as provided by law.

2
4
6

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 1765

An Act To Clarify the Responsibilities under the Adult Protective Services Act

LR 2644(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional cost to the Department of Human Services in implementing this legislation can be absorbed by the department utilizing existing budgetary resources.