

# 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)

*ms*  
*RRR*

L.D. 1405

DATE: 6-6-05

(Filing No. S-336)

JUDICIARY

Reported by:

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE  
SENATE  
122ND LEGISLATURE  
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 494, L.D. 1405, Bill, "An Act To Prepare Maine for Public Health Emergencies"

Amend the bill in section 8 by striking out all of subsection 3 (page 3, lines 37 to 43 in L.D.) and inserting in its place the following:

'3. Rules. The department shall adopt rules to carry out its duties as specified in this chapter. The application of rules adopted pursuant to Title 5, section 8052 to implement section 820 must be limited to periods of an extreme public health emergency. Rules adopted pursuant to this subsection, unless otherwise indicated, are routine technical rules as defined in Title 5, chapter 375, subchapter II-A 2-A.'

Further amend the bill in section 9 in that part designated "§803." by striking out all of the indented paragraph (page 4, lines 1 to 10 in L.D.) and inserting in its place the following:

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

COMMITTEE AMENDMENT

2 Further amend the bill by striking out all of section 16 and  
inserting in its place the following:

4 'Sec. 16. 22 MRSA §820, sub-§1, ¶¶C and D are enacted to read:

6  
8 C. The department may implement rules to address the risk  
or potential risk of a shortage of health care workers.  
These rules are major substantive rules as defined in Title  
10 5, chapter 375, subchapter 2-A.

12 D. The department may implement rules to address the need  
for dispensing drugs in an emergency situation. These rules  
14 are major substantive rules as defined in Title 5, chapter  
375, subchapter 2-A.'

16  
18 Further amend the bill in section 19 in the first paragraph  
in the 15th line (page 8, line 11 in L.D.) by inserting after the  
following: "providers and" the following: 'health and human  
20 services'

22 Further amend the bill in section 19 in the first paragraph  
in the 5th line from the end (page 8, line 13 in L.D.) by  
24 inserting after the following: "chapter." the following:  
'Information not reasonably required for the purposes of this  
26 section may not be released.'

28 Further amend the bill in section 23 in that part designated  
"§875." in subsection 1 in paragraph A in the 2nd line (page 10,  
30 line 14 in L.D.) by inserting after the following: "individual"  
the following: 'public health'

32  
34 Further amend the bill in section 23 in that part designated  
"§875." in subsection 1 by striking out all of paragraph E (page  
10, lines 33 to 42 in L.D.) and inserting in its place the  
36 following:

38 'E. The employee is unable to work because the employee is  
needed to provide care or assistance to one or more of the  
40 following individuals: the employee's spouse or domestic  
partner as defined under Title 18-A, section 1-201,  
42 subsection (10-A); the employee's parent; or the employee's  
child or child for whom the employee is the legal guardian.'

44  
46 Further amend the bill in section 23 in that part designated  
"§875." by striking out all of subsections 2 and 3 and inserting  
in their place the following:

2 '2. Exceptions. An employer who fails to grant a leave  
3 under subsection 1 is not in violation of subsection 1 if:

4 A. The employer would sustain undue hardship from the  
5 employee's absence, including the need to downsize for  
6 legitimate reasons related to the impact of the extreme  
7 public health emergency on the operation of the business;

8  
9 B. The request for leave is not communicated to the  
10 employer within a reasonable time under the circumstances; or

11 C. The employee to be granted leave under subsection 1,  
12 paragraph E is a state, county or municipal employee whose  
13 responsibilities are related to services necessary for  
14 protecting the public's health and safety in an extreme  
15 public health emergency if the employer requires the  
16 employee to work, unless there are no other options or  
17 persons able to provide care or assist one or more of the  
18 individuals listed under subsection 1, paragraph E.

19  
20 3. Duration of leave. Leave granted under subsection 1  
21 must be for the duration of an extreme public health emergency  
22 and for a reasonable and necessary time period following the  
23 termination of the extreme public health emergency for diseases  
24 or conditions that are contracted or exposures that occurred  
25 during the extreme public health emergency.

26  
27 4. Documentation. Upon the employee's return to work, the  
28 employer has the right to request and receive written  
29 documentation from a physician or public health official  
30 supporting the employee's leave.

31  
32 5. Benefits retained. The taking of leave under this  
33 subchapter may not result in the loss of any employee benefits  
34 accrued before the date on which the leave commenced and does not  
35 affect the employee's right to health insurance benefits on the  
36 same terms and conditions as applicable to similarly situated  
37 employees. For any leave that extends beyond the time described  
38 in subsection 3, the employer shall allow an employee to continue  
39 the employee's benefits at the employee's expense. The employer  
40 and employee may negotiate for the employer to maintain benefits  
41 at the employer's expense for the duration or any portion of  
42 this extended leave.'

43  
44  
45 Further amend the bill in section 23 in that part designated  
46 "§875." by renumbering the subsections to read consecutively.

48

SUMMARY

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

This amendment revises the language concerning the adoption of rules pertaining to extreme public health emergencies.

This amendment clarifies the provision amending inspection requirements.

This amendment designates rules regarding health care workers and the dispensing of drugs in an extreme public health emergency as major substantive rules.

This amendment clarifies that in the event of an actual or threatened epidemic or outbreak the Department of Health and Human Services, Bureau of Health may share only the amount of information necessary with health and human services providers for the purpose of carrying out their public health functions.

This amendment makes it clear that employers have a hardship exemption and that the leave and related benefits apply only during an extreme public health emergency, or to diseases or conditions that are contracted or exposures that occur during the extreme public health emergency.

This amendment makes clear that the investigation that an individual must be subject to in order to qualify for leave is a public health investigation, as opposed to a potential criminal investigation for causing the extreme public health emergency.

This amendment allows an employee to miss work only to care for the employee's spouse or domestic partner, the employee's parent or the employee's child.

This amendment provides that the employer has a right to ask for and receive written documentation from a physician or public health official supporting the employee's leave once the employee returns to work.

This amendment limits the duration of leave to the time period of the extreme public health emergency as well as a reasonable and necessary time period following for diseases or conditions contracted or exposures that occurred during the emergency.

This amendment provides that the leave does not affect the employee's right to health insurance benefits on the same terms and conditions as applicable to similarly situated employees. For any leave beyond the defined period, the employer must make it possible for the employee to retain employee benefits at the

COMMITTEE AMENDMENT "A" to S.P. 494, L.D. 1405

2 employee's expense, although the employer and employee may  
negotiate for the employer to maintain the benefits at the  
4 employer's expense.

4

6

**FISCAL NOTE REQUIRED**  
(See attached)

8



Approved: 06/01/05 *MAC*

# 122nd MAINE LEGISLATURE

LD 1405

LR 0602(02)

An Act To Prepare Maine for Public Health Emergencies

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

---

## Fiscal Note

Minor cost increase - General Fund  
Minor revenue increase - General Fund

### Fiscal Detail and Notes

Additional costs to the Bureau of Labor Standards within the Department of Labor associated with investigating complaints regarding employment leaves can be absorbed within existing budgeted resources. Assessing civil penalties of up to \$200 per violation may result in increased fine revenues to the General Fund. The amount can not be determined at this time but is not expected to be significant. Any additional costs to the Department of Health and Human Services can be absorbed by the department utilizing existing resources.