

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1405

S.P. 494

In Senate, March 22, 2005

### An Act To Prepare Maine for Public Health Emergencies

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Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.  
Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MAYO of Sagadahoc.  
Cosponsored by Representative MILLER of Somerville and  
Senators: ROSEN of Hancock, WOODCOCK of Franklin, Representatives: BURNS of  
Berwick, CAMPBELL of Newfield, CANAVAN of Waterville, DUNN of Bangor,  
GERZOFKY of Brunswick, NASS of Acton.

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

Sec. 1. 22 MRSA c. 250, as amended, is further amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 250

CONTROL OF NOTIFIABLE DISEASES AND CONDITIONS

Sec. 2. 22 MRSA §801, sub-§§4-B to 4-E are enacted to read:

4-B. Environmental disease. "Environmental disease" means any abnormal condition or disorder aggravated or caused by exposure to an environmental hazard.

4-C. Environmental hazard. "Environmental hazard" means chemicals, physical agents, biomechanical stressors and biological toxins that are present in the environment and that have an adverse effect on human health.

4-D. Environmentally related health effects. "Environmentally related health effects" means chronic diseases, birth defects, developmental disabilities and other noninfectious health effects that may be related to exposure to environmental hazards.

4-E. Exposure. "Exposure" means direct contact or interaction with an environmental hazard or toxic agent affecting or being taken into the body.

Sec. 3. 22 MRSA §801, sub-§7, as enacted by PL 1989, c. 487, §11, is amended to read:

7. Notifiable disease or condition. "Notifiable disease or condition" means any communicable disease or, occupational disease or environmental disease, the occurrence or suspected occurrence of which is required to be reported to the department pursuant to sections 821 to 825 or section 1493.

Sec. 4. 22 MRSA §801, sub-§10, as enacted by PL 1989, c. 487, §11, is amended to read:

10. Public health threat. "Public health threat" means any condition or behavior which that can reasonably be expected to place others at significant risk of exposure to a toxic agent or environmental hazard or infection with a communicable notifiable disease or condition.

2 A. A condition poses a public health threat if an  
infectious or toxic agent or environmental hazard is present  
4 in the environment under circumstances which that would  
place persons at significant risk of ~~becoming--infected~~ an  
6 adverse effect on a person's health from exposure to or  
infection with a ~~communicable~~ notifiable disease or  
8 condition.

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

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

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

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

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

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

38 **Sec. 5. 22 MRSA §801, sub-§11** is enacted to read:

40 11. Toxic agent. "Toxic agent" means a chemical or  
physical substance that, under certain circumstances of exposure,  
42 may cause harmful effects to living organisms.

44 **Sec. 6. 22 MRSA §802, sub-§1, ¶¶A to D**, as enacted by PL 1989,  
c. 487, §11, are amended to read:

46 A. Designate and classify communicable, environmental and  
48 occupational diseases;

50 B. Establish requirements for reporting and other  
surveillance methods for measuring the occurrence of

2 communicable **diseases**, occupational **diseases** and  
3 environmental diseases and the potential for epidemics;

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

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

12 **Sec. 7. 22 MRSA §802, sub-§2**, as enacted by PL 1989, c. 487,  
13 §11, is amended to read:

14 **2. Health emergency.** In the event of an actual or  
15 threatened epidemic or ~~outbreak of a communicable or occupational~~  
16 **disease public health threat**, the department may declare that a  
17 health emergency exists and may adopt emergency rules for the  
18 protection of the public health relating to:

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

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

24 C. The establishment of temporary facilities for the care  
25 and treatment of infected or exposed persons, which ~~shall be~~  
26 are subject to the supervision and regulations of the  
27 department and to the limitations set forth in section 807.

28 **Sec. 8. 22 MRSA §802, sub-§3**, as repealed and replaced by PL  
29 2001, c. 694, Pt. B, §4 and affected by PL 2003, c. 366, §1, is  
30 amended to read:

31 **3. Rules.** The department shall adopt rules to carry out  
32 its duties as specified in this chapter. ~~The application of~~  
33 ~~rules adopted pursuant to Title 5, section 8052 to implement~~  
34 ~~section 820 must be limited to periods of an extreme public~~  
35 ~~health emergency.~~ Rules adopted pursuant to this subsection are  
36 routine technical rules as defined in Title 5, chapter 375,  
37 subchapter II-A 2-A.

38 **Sec. 9. 22 MRSA §803**, as enacted by PL 1989, c. 487, §11, is  
39 amended to read:

40 **§803. Inspection**

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

12 **Sec. 10. 22 MRSA §806, sub-§1**, as enacted by PL 1989, c. 487,  
§11, is amended to read:

14  
1. **Dismissal.** In the event of an actual or threatened  
16 outbreak of a communicable disease or other public health threat,  
the department may order that any ~~ex-all-persons~~ person attending  
18 or working in any a school or day care facility be excluded until  
the department determines that a public health threat no longer  
20 exists.

22 **Sec. 11. 22 MRSA §807, last ¶**, as enacted by PL 1989, c. 487,  
§11, is amended to read:

24  
For purposes of carrying out this chapter, the department  
26 may designate facilities and private homes for the confinement  
and treatment of infected persons posing a public health threat.  
28 The department may designate any such facility in any hospital or  
other public or private institution, other than a jail or  
30 correctional facility. Designated institutions must have  
necessary clinic, hospital or confinement facilities as may be  
32 required by the department. The department may enter into  
arrangements for the conduct of these facilities with public  
34 officials or persons, associations or corporations in charge of  
or maintaining and operating these institutions.

36  
38 **Sec. 12. 22 MRSA §812, sub-§1, ¶G**, as enacted by PL 1989, c.  
487, §11 and amended by PL 2003, c. 689, Pt. B, §6, is further  
amended to read:

40  
42 G. Undergoing a comprehensive medical assessment by the  
State Forensic Service. The court, in selecting the  
44 examination site, shall consider proximity to the court,  
availability of an examiner and the need to protect the  
46 public health. No person may be presented for examination  
under this subsection without arrangements for examination  
48 having first been made by the court, clerk of the court or  
the petitioner with the State Forensic Service. The opinion  
50 of the State Forensic Service shall must be reported to the  
court forthwith following the examination.

2 The court shall order the individual to be further examined  
4 by a psychiatrist, neurologist and any additional expert if,  
based on the report of the State Forensic Service, it  
6 appears that:

8 (1) The individual suffers from a mental disease or  
defect which that causes the individual to act in such  
10 a manner as to endanger others with risk of infection  
with a communicable disease; or

12 (2) Further observation or examination is required.

14 If, based on the examinations, the department determines  
16 that admission to an appropriate institution for the  
mentally ill or mentally retarded is necessary, it shall  
18 petition for involuntary hospitalization pursuant to Title  
34-B, chapter 3. If the District Court orders the  
20 involuntary hospitalization of the individual pursuant to  
Title 34-B, chapter 3, the petition brought pursuant to  
22 section 811 ~~shall~~ must be dismissed without prejudice. If  
it is determined that admission to an appropriate  
24 institution for the mentally ill or the mentally retarded is  
not necessary, the head of the institution where the  
26 examinations have taken place shall notify the commissioner  
or the commissioner's designee, prior to discharging the  
respondent.

28 In no event may the period of examination pursuant to this  
30 subsection exceed 60 days without further order by the  
court, which may extend commitment for further observation  
32 or examination for an additional 60 days, provided that the  
court finds facts sufficient to show that the individual  
34 suffers from a mental disease or defect which that causes  
the individual to act in such a manner as to endanger others  
36 with risk of infection with a communicable disease; and

38 **Sec. 13. 22 MRSA §815, sub-§1**, as enacted by PL 1989, c. 487,  
§11, is amended to read:

40 **1. Privileges abrogated.** Subject to the limitations  
42 imposed by United States Code, Title 42, Sections 290dd-3 and  
290ee-3, the physician-patient and psychotherapist-patient  
44 privileges under the Maine Rules of Evidence and those  
confidential communications described under Title 5, section  
46 19203, Title 24-A, section 4224, Title 32, section 7005 and Title  
34-B, section 1207, are abrogated to the extent necessary to  
48 permit reporting to the Bureau of Health any incidents of  
notifiable disease or condition; cooperating with the Bureau of  
50 Health or an intervention team appointed by the Bureau of Health

2 in investigating a case of a notifiable disease or condition or  
3 suspected epidemic, or taking preventive action in such a case;  
4 or giving evidence in a proceeding pursuant to this chapter.  
5 Information released to the bureau pursuant to this section shall  
6 must be kept confidential and may not be disclosed by the bureau  
7 except as provided in section 824 and Title 5, section 19203,  
8 subsection 8.

9  
10 **Sec. 14. 22 MRSA §817**, as enacted by PL 1989, c. 487, §11, is  
11 amended to read:

12 **§817. Discharge**

13  
14 An individual committed to a hospital ~~or institution~~  
15 facility or private home pursuant to section 812 may be  
16 discharged whenever the physician responsible for that  
17 individual's treatment and the department determine that the  
18 individual may be discharged without danger to other  
19 individuals. The department shall immediately report the  
20 discharge, with a full statement of the reasons for the  
21 discharge, to the court ~~which that~~ ordered the commitment.

22  
23 If an individual committed to a hospital, facility or  
24 private home pursuant to section 812 ~~leaves-the-hospital~~ violates  
25 the commitment prior to discharge in accordance with this  
26 section, the hospital or physician responsible for treatment  
27 shall immediately report this to the department. An arrest  
28 warrant ~~shall--issue~~ must be issued upon application by the  
29 department to the District Court.

30  
31 **Sec. 15. 22 MRSA §820, sub-§1, ¶A**, as enacted by PL 2001, c.  
32 694, Pt. A, §1 and affected by PL 2003, c. 366, §1, is amended to  
33 read:

34  
35 A. Upon request of the department, a medical health care  
36 provider, pharmacist, medical laboratory or veterinarian  
37 shall provide to the department health information directly  
38 related to a declared extreme public health emergency.

39  
40 **Sec. 16. 22 MRSA §820, sub-§1, ¶¶C, D and E** are enacted to read:

41  
42 C. The department may implement rules to address the risk  
43 or potential risk of a shortage of health care workers.

44  
45 D. The department may implement rules to address the need  
46 for dispensing drugs in an emergency situation.



2 E. Rules adopted pursuant to this subsection are routine  
3 technical rules as defined in Title 5, chapter 375,  
4 subchapter 2-A.

5 **Sec. 17. 22 MRSA §820, sub-§4**, as enacted by PL 2001, c. 694,  
6 Pt. A, §1 and affected by PL 2003, c. 366, §1, is repealed.

7 **Sec. 18. 22 MRSA §§821 to 823**, as enacted by PL 1989, c. 487,  
8 §11, are amended to read:

9 **§821. Authority of department**

10 The department shall adopt rules pursuant to section 802 and  
11 establish procedures to carry out the rules to provide a uniform  
12 system of reporting, recording and collecting information and  
13 maintaining confidentiality concerning communicable diseases,  
14 environmental or occupational diseases or exposure to toxic  
15 agents. The department may designate any communicable disease,  
16 environmental disease, occupational disease or exposure to a  
17 toxic agent as a notifiable disease or condition. Any notifiable  
18 disease shall or condition must be reported to the department in  
19 accordance with this subchapter and the rules established by the  
20 department.

21 **§822. Reporting**

22 Whenever any physician knows or has reason to believe that  
23 any person whom the physician examines or cares for has or is  
24 afflicted with any communicable disease or condition designated  
25 as notifiable, that physician shall notify the department and  
26 make such a report as may be required by the rules of the  
27 department. Reports shall must be in the form and content  
28 prescribed by the department and the department shall provide  
29 forms for making required reports.

30 **§823. Time requirements**

31 The reporting of a notifiable disease shall or condition  
32 must be made by telephone to the department immediately upon  
33 determination that a person has that disease and shall must be  
34 followed by a written report mailed to the department within 48  
35 hours.

36 **Sec. 19. 22 MRSA §824, first ¶**, as enacted by PL 1989, c. 487,  
37 §11, is amended to read:

38 Any person who receives information pursuant to this chapter  
39 shall treat as confidential the names of individuals having or  
40 suspected of having a notifiable communicable disease or  
41 condition, as well as any other information that may identify  
42

2 those individuals. This information may be released to the  
3 department for adult or child protection purposes in accordance  
4 with chapters 958-A and 1071, or to other public health  
5 officials, agents or agencies or to officials of a school where a  
6 child is enrolled, for public health purposes, but that release  
7 of information must be made in accordance with Title 5, chapter  
8 501, where applicable. In a the event of an actual or threatened  
9 epidemic or outbreak or public health threat or emergency, as  
10 declared by the ~~state-health-officer~~ Director of the Bureau of  
11 Health, the information may also be released to private health  
12 care providers and agencies for the purpose of ~~preventing-further~~  
13 ~~disease--transmission~~ carrying out public health functions as  
14 authorized by this chapter. All information submitted pursuant  
15 to this chapter that does not name or otherwise identify  
16 individuals having or suspected of having a notifiable  
17 ~~e~~communicable disease or condition may be made available to the  
18 public at the sole discretion of the department.

19 **Sec. 20. 22 MRSA §825**, as enacted by PL 1989, c. 487, §11, is  
20 amended to read:

21 **§825. Penalties**

22 Any person who knowingly and willfully fails to comply with  
23 reporting requirements for notifiable diseases or conditions  
24 commits a civil violation for which a ~~forfeiture~~ fine of not more  
25 than \$250 may be adjudged. A person who knowingly or recklessly  
26 makes a false report under section 822 or who knowingly violates  
27 section 824, is civilly liable for actual damages suffered by a  
28 person reported upon and for punitive damages and commits a civil  
29 violation for which a ~~forfeiture~~ fine of not more than \$500 may  
30 be adjudged.  
31

32 **Sec. 21. 22 MRSA §2013-A, sub-§1**, as amended by PL 1993, c.  
33 600, Pt. B, §§2 to 4, is further amended to read:

34 **1. Exemptions.** Subject to the limitations set forth in  
35 ~~subsection~~ subsections 2 and 3, the following entities are  
36 exempted from the provisions of this Act under the following  
37 circumstances:  
38

39 A. Medical laboratories operated by the United States  
40 Government, the State or municipalities of the State;

41 B. Laboratory facilities and laboratory services operated  
42 in a hospital licensed by the State;

43 C. Physicians and medical staff pursuant to this paragraph:  
44

2 (1) Physicians, physician assistants, family nurse  
3 practitioners, Medicare-certified rural health clinics,  
4 professional associations or group practices performing  
5 only tests acceptable to the department, as defined by  
6 rule, exclusively for the examination of their own  
7 patients; and

8 (2) Physicians, physician assistants, family nurse  
9 practitioners, Medicare-certified rural health clinics,  
10 professional associations or group practices performing  
11 tests, other than those listed in subparagraph (1),  
12 exclusively for the examination of their own patients  
13 are subject only to sections 2024, 2025 and 2039.

14 Notwithstanding subparagraphs (1) and (2), laboratories  
15 incorporated for the mutual use of physician or group  
16 practice owners ~~shall be~~ are subject to all provisions of  
17 this Act;

18 D. Medical laboratories in a school, college, university or  
19 industrial plant which that are under the direct supervision  
20 of, and which whose services are used exclusively by, a duly  
21 licensed physician and which that perform only tests  
22 acceptable to the department; otherwise, only sections 2024,  
23 2025 and 2039 apply;

24 E. Laboratories operated and maintained for research and  
25 teaching purposes which that are recognized by the  
26 department or involve no patient or public health service;

27 F. The practice of radiology by a radiologist; and

28 G. Laboratory services performing health screening tests as  
29 defined and regulated by rule adopted by the department.  
30 Services exempted under this paragraph include, but are not  
31 limited to, the performance of screening tests for  
32 cholesterol and colon cancer.

33 **Sec. 22. 22 MRSA §2013-A, sub-§3** is enacted to read:

34 3. Public health reporting requirements. Notwithstanding  
35 subsection 1, any facility, regardless of location, that  
36 receives, forwards or analyzes specimens of material from the  
37 human body or referred cultures of specimens from the human body  
38 and reports the results to health care providers who use the data  
39 for purposes of patient care must comply with chapter 250.

40 **Sec. 23. 26 MRSA c. 7, sub-c. 10** is enacted to read:

41 **SUBCHAPTER 10**

2    **EMPLOYMENT DURING EXTREME PUBLIC**  
4    **HEALTH EMERGENCY**

6                    **§875. Employment leaves for caregivers and persons affected by**  
   **extreme public health emergency**

8                    **1. Required leave.** An employer shall grant reasonable and  
10                    **necessary leave from work, with or without pay, for an employee**  
12                    **for the following reasons related to an extreme public health**  
   **emergency:**

14                    **A. The employee is unable to work because the employee is**  
   **under individual investigation, supervision or treatment**  
16                    **related to an extreme public health emergency:**

18                    **B. The employee is unable to work because the employee is**  
   **acting in accordance with an extreme public health emergency**  
20                    **order:**

22                    **C. The employee is unable to work because the employee is**  
   **in quarantine or isolation or is subject to a control**  
24                    **measure in accordance with extreme public health emergency**  
   **information or directions issued to the public, a part of**  
26                    **the public or one or more individuals:**

28                    **D. The employee is unable to work because of a direction**  
   **given by the employee's employer in response to a concern of**  
30                    **the employer that the employee may expose other individuals**  
   **in the workplace to the extreme public health emergency**  
32                    **threat; or**

34                    **E. The employee is unable to work because the employee is**  
   **needed to provide care or assistance to one or more of the**  
36                    **following individuals: the spouse or same-sex partner of**  
   **the employee; a parent, stepparent or foster parent of the**  
38                    **employee or the employee's spouse or same-sex partner; a**  
   **child, stepchild or foster child of the employee or the**  
40                    **employee's spouse or same-sex partner; the spouse or**  
   **same-sex partner of a child of the employee; the employee's**  
42                    **sibling; or a relative of the employee who is dependent on**  
   **the employee for care or assistance.**

44                    **For purposes of this subsection, "extreme public health**  
46                    **emergency" has the same meaning as in Title 22, section 801,**  
   **subsection 4-A.**

48                    **2. Exceptions.** An employer who fails to grant a ~~leave~~  
50                    **under subsection 1 is not in violation of subsection 1 if:**



2           4. It removes reference to the term "medical provider" and  
clarifies reporting requirements of medical laboratories.  
4 "Medical provider," which is undefined, is replaced with "health  
care provider" and medical laboratories are added to the list of  
6 those from whom the department may request information in an  
extreme public health emergency.

8  
10           5. The chapter has been renamed to acknowledge that  
notifiable conditions include communicable, environmental and  
12 occupational diseases. It provides definitions of "public health  
threat" and "notifiable disease or condition" to allow for  
reporting related to toxins or other agents that could have  
14 serious implications either in the severity of the impact on  
individuals or potential for impact on a large number of people.

16           6. It eliminates the Medical Legal Advisory Panel.

18  
20           7. It clarifies that protected health information may be  
disclosed to health providers in the event of an actual or  
threatened outbreak or epidemic as declared by the Director of  
22 the Bureau of Health.

24           8. It clarifies that, under the Maine Medical Laboratory  
Act, licensed and unlicensed laboratories have public health  
26 reporting requirements. This provision requires all laboratories  
that receive, forward or analyze specimens of materials from the  
28 human body or referred cultures of specimens from the human body  
and report the results to health care providers who use the data  
30 for purposes of patient care to comply with the law regarding  
control and reporting of notifiable diseases and conditions.  
32 This provision allows compliance with these requirements to be  
considered when laboratories are evaluated and applications for  
34 licenses or renewals are considered.

36           9. It provides employment protection in an extreme public  
health emergency by protecting from unfavorable employment  
38 actions an employee who has been quarantined or isolated or who  
provides care to someone who has been isolated or quarantined  
40 during an extreme public health emergency. The proposal is  
modeled after legislation that was passed in Toronto as a result  
42 of SARS and draws from several Maine laws providing employment  
protection to those who are victims of abuse, on family medical  
44 leave or serving in the military.