

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND NINETEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 2, 1998 to June 19, 1999**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 18, 1999**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1999**

5 mediators approved by the department, must be retained prior to seeking enactment of legislation or civil action in a court of law to resolve such an issue. Either party may initiate a request for a mediator. The costs of retaining such a mediator must be shared by the exclusive bargaining agent and the race track.

If the exclusive bargaining agent and the racetrack can not select a mutually agreed upon mediator within 15 days of initiating a request for mediation of a harness racing issue, either party may so advise the department. The department shall thereafter either appoint a mediator or designated employee of the department to serve as mediator. If at mediation the parties are not able to reach an agreement, the mediator shall make findings of fact and prepare a report that addresses the following issues:

A. The identity, nature and character of each issue on which the parties are unable to agree;

B. The relationship of each issue to the viability of the harness racing industry in Maine;

C. The position of the parties on each issue;

D. The value of what each party is offering in relation to that party's demands;

E. How similar disputes are resolved among other parties inside and outside of the harness racing industry;

F. Whether the issue in dispute is governed or affected by any existing rule or statute and, if so, whether the rule or statute should be amended; and

G. A recommendation stating whether the dispute among the parties is best addressed in a private manner, in a court of law, by legislation, by regulation or by arbitration.

The mediator shall present the report to each of the parties and shall file copies with the department, the commission and the Joint Standing Committee on Legal and Veterans Affairs. The mediator shall report to the Joint Standing Committee on Legal and Veterans Affairs by January 15, 2000 to present information on any issue that has been resolved by the mediation described in this section, to present a report if one is complete or to present information regarding the status of ongoing mediation, whichever the case may be.

2. Standards. In making any recommendation, the mediator shall consider the following:

A. Promoting profitability of the harness racing industry;

B. Any existing statute or rule governing the issue in dispute;

C. Custom and practice in the industry;

D. Fair election of the bargaining agent; and

E. Equity among the parties.

3. Costs. The costs for the services of the mediator including, if any, per diem expenses, actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation is conducted, must be shared equally by the racetrack and the exclusive bargaining agent.

4. Violation; penalty. Notwithstanding any other provision of this chapter, failure or refusal to submit to the mediation process as described in this section constitutes a violation of this section for which the commission may impose a penalty not to exceed \$5,000.

5. Repeal. This section is repealed January 1, 2001.

**Sec. 10. Retroactivity.** The section that amends the Maine Revised Statutes, Title 8, section 275-A, subsection 1 is retroactive to June 17, 1993.

See title page for effective date.

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## CHAPTER 483

### H.P. 1176 - L.D. 1687

#### An Act Relating to Medicaid Liens

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

**Sec. 1. 22 MRSA §14, sub-§1,** as amended by PL 1997, c. 795, §1, is further amended to read:

**1. Recovery procedures.** When benefits are provided or will be provided to a beneficiary under the Medicaid program administered by the department pursuant to the United States Social Security Act, Title XIX, or under the Maine Health Program, section 3189, for the medical costs of injury, disease, disability or similar occurrence for which a 3rd party is, or may be, liable, the commissioner may recover from that party the reasonable value of the benefits provided. This right of recovery is separate and independent from any rights or causes of action belonging to a beneficiary under the Medicaid program or under the Maine Health Program. For Medicaid recipients who participated in the Medicaid managed care program, "reasonable value" means the total value of coverable medical services provided measured by the amount that Medicaid would have

paid to providers directly for such services, were it not for the managed care system. The Medicaid program and Maine Health Program are the payors of last resort and should provide medical coverage only when there are no other available resources. The Attorney General, or counsel appointed by the Attorney General, may, to enforce this right, institute and prosecute legal proceedings directly against the 3rd party in the appropriate court in the name of the commissioner.

In addition to the right of recovery set forth in this subsection, the commissioner must also be subrogated, to the extent of any benefits provided under the Medicaid program or under the Maine Health Program, to any cause of action or claim that a beneficiary has against a 3rd party who is or may be liable for medical costs incurred by or on behalf of the beneficiary. The Attorney General, or counsel appointed by the Attorney General, to enforce this right may institute and prosecute legal proceedings in the name of the injured person, beneficiary, guardian, personal representative, estate or survivor. If necessary to enforce the commissioner's right of recovery, the Attorney General, or counsel appointed by the Attorney General, may institute legal proceedings against any beneficiary who has received a settlement or award from a 3rd party.

The commissioner's right to recover the reasonable value of benefits provided constitutes a statutory lien on the proceeds of an award or settlement from a 3rd party, ~~whether that award or settlement is or is not intended to include compensation for medical costs if recovery for Medicaid costs was or could have been included in the recipient's claim for damages from the 3rd party.~~ The commissioner is entitled to recover the ~~full~~ amount of the benefits actually paid out or, with regard to Medicaid recipients who participated in the managed care program when the commissioner has determined that collection will be cost-effective, the reasonable value of benefits provided to the extent that there are proceeds available for such recovery after the deduction of reasonable attorney's fees and litigation costs from the gross award or settlement. In determining whether collection will be cost-effective, the commissioner shall consider all factors that diminish potential recovery by the department, including but not limited to questions of liability and comparative negligence or other legal defenses, exigencies of trial that reduce a settlement or award in order to resolve the recipient's claim and limits on the amount of applicable insurance coverage that reduce the claim to the amount recoverable by the recipient. The department's statutory lien may not be reduced to reflect an assessment of a pro rata share of the recipient's attorney's fees or litigation costs. The commissioner may compromise, or settle and execute a release of, any claim or waive any claim, in whole or in part, if the commissioner determines the collection

will not be cost-effective or that the best possible outcome requires compromise, release or settlement.

**Sec. 2. 22 MRSA §14, sub-§2-F**, as amended by PL 1997, c. 795, §2, is further amended to read:

**2-F. Disbursement.** ~~—A—~~ Except as otherwise provided in this subsection, a disbursement of any award, judgment or settlement may not be made to a recipient without the recipient or the recipient's attorney first paying to the department the amount of the statutory lien from the award, judgment or settlement or obtaining from the department a release of any obligation owed to it for medical benefits provided to the recipient. If a dispute arises between the recipient and the commissioner as to the settlement of any claim that the commissioner may have under this section, the 3rd party or the recipient's attorney shall withhold from disbursement to the recipient an amount equal to the commissioner's claim. Either party may apply to the Superior Court or the District Court in which an action based upon the recipient's claim could have been commenced for an order to determine a reasonable amount in satisfaction of the statutory lien, consistent with federal law, considering whether an independent action by the commissioner would have been cost-effective.

See title page for effective date.

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## CHAPTER 484

S.P. 816 - L.D. 2222

### An Act to Retain Jobs at Paper Production Facilities in the State

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas**, paper companies have been selling and offering to sell their Maine assets and have been closing or limiting production at their paper production facilities in the State; and

**Whereas**, the employees of one paper production facility in the State have been conducting negotiations with the owner to purchase the facility; and

**Whereas**, it is essential to the continued success of the negotiations that the State demonstrate immediately that the State will make available under certain conditions financial assistance for employee buyouts of paper production facilities in the State; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of