

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

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TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
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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.

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

the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 10 MRSA §963-A, sub-§10, ¶P, as amended by PL 1997, c. 500, §3, is further amended to read:

P. Any workers' compensation residual market mechanism project; ~~and~~

Sec. 2. 10 MRSA §963-A, sub-§10, ¶Q, as enacted by PL 1997, c. 500, §4, is amended to read:

Q. Any clean fuel vehicle project; ~~and~~

Sec. 3. 10 MRSA §963-A, sub-§10, ¶R is enacted to read:

R. Any paper industry job retention project.

Sec. 4. 10 MRSA §963-A, sub-§42-C is enacted to read:

42-C. Paper industry job retention project. "Paper industry job retention project" means the acquisition and improvement of a paper production facility in the State, in which not less than 40% of the ownership of the project will be, at the time the financial assistance is provided, owned or controlled by or for the benefit of a majority of the employees of the project through a qualified employee stock ownership program or other employee ownership program recognized in the federal Internal Revenue Code.

Sec. 5. 10 MRSA §1043, sub-§2, ¶I, as amended by PL 1995, c. 4, §6, is further amended to read:

I. The project will, to the extent possible, cooperate with representatives of the Department of Labor and the Department of Human Services regarding employment opportunities for recipients of the services of those departments; ~~and~~

Sec. 6. 10 MRSA §1043, sub-§2, ¶J, as enacted by PL 1995, c. 4, §7, is amended to read:

J. In the case of major business expansion projects, the applicant is creditworthy and there is a strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other sources of revenues and collateral pledged to the repayment of those securities. In order to make this determination, the authority shall consider such factors as it considers necessary to measure and evaluate the suffi-

ciency of the pledged revenues to repay the obligations, including:

(1) Whether individuals or entities obligated to repay the obligations have demonstrated sufficient revenues from the project or from other sources to repay the obligations, and a strong probability that those revenues will continue to be available for the term of the revenue obligation securities;

(2) Whether the applicant demonstrates a strong probability that the project will continue to operate and provide the public benefits projected to be created for the term of the revenue obligation securities;

(3) Whether the applicant demonstrates that the benefits projected to be created by the project are enhanced through the use of financing assistance from the authority;

(4) Whether the applicant's creditworthiness is demonstrated by such factors as historical financial performance, management ability, its plan for marketing its product or service and its ability to access conventional financing;

(5) Whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry;

(6) Whether the applicant demonstrates that the need for authority assistance is due to the reduced cost and increased flexibility of the financing for the project that result from authority assistance and not from an inability to obtain necessary financing without the capital reserve fund security provided by the authority; and

(7) Whether collateral securing the repayment obligation is reasonably sufficient under the circumstances.

Financing assistance for any one major business expansion project may not exceed \$25,000,000 in loan amount. The authority may establish, pursuant to rules adopted in accordance with Title 5, chapter 375, subchapter II, application procedures, approval criteria and reasonable fees for major business expansion projects; ~~and~~

Sec. 7. 10 MRSA §1043, sub-§2, ¶K is enacted to read:

K. In the case of a paper industry job retention project, the applicant is creditworthy and there is

a strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other sources of revenues and collateral pledged to the repayment of those securities. To assist in making its determination the authority may engage, at the borrower's expense, independent consultants to assist in the evaluation of the project. In making this determination, the authority shall consider factors it considers necessary to measure and evaluate the sufficiency of the pledged revenues to repay the securities, including:

(1) Whether individuals or entities obligated to repay the securities have demonstrated sufficient revenues from the project or from other sources to repay the securities and a strong probability that those revenues will continue to be available for the term of the securities;

(2) Whether the applicant demonstrates a strong probability that the project will continue to operate and to provide the public benefits projected to be created for the term of the securities;

(3) Whether the applicant demonstrates that the benefits projected to be created by the project are enhanced through the use of financial assistance from the authority;

(4) Whether the applicant's creditworthiness is demonstrated by such factors as historical financial performance, management ability and the applicant's plan for marketing products or service and its ability to access conventional financing;

(5) Whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry. In assessing projected financial performance, the authority must consider the value and effect of any contractual labor cost reductions that will be in effect at the time the financial assistance is provided;

(6) Whether collateral securing the repayment obligation, valued in place and in use, is reasonably sufficient under the circumstances;

(7) Whether the owner will make an important equity contribution to the project. If the applicant requests financing assistance from the authority in an amount greater than \$25,000,000, the amount financed by the authority may not exceed \$25,000,000 plus 50% of the total project

costs in excess of \$25,000,000. If other financing is subordinate to the financing provided by the authority, the amount financed by the authority may not exceed \$25,000,000 plus 70% of the total project costs in excess of \$25,000,000; and

(8) Whether the applicant demonstrates that the need for authority assistance is due to the reduced cost and increased flexibility of the financing for the project that result from the authority assistance and not from an inability to obtain necessary financing without the capital reserve fund security provided by the authority.

Sec. 8. 10 MRSA §1053, sub-§6, as repealed and replaced by PL 1997, c. 781, §1, is amended to read:

6. Securities outstanding. The principal amount of revenue obligation securities the authority may have outstanding at any one time, to which subsection 5 is stated to apply in the trust agreement or other document, may not exceed an aggregate principal amount equal to ~~\$657,000,000~~ \$777,000,000 as follows:

A. The sum of \$330,000,000 consisting of not more than \$275,000,000 for loans and up to \$55,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for electric rate stabilization projects;

B. The sum of \$120,000,000 consisting of not more than \$100,000,000 for loans and up to \$20,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for major business expansion projects;

C. The sum of \$57,000,000 consisting of not more than \$45,000,000 for loans and up to \$12,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to workers' compensation residual market mechanism projects; ~~and~~

D. The sum of \$150,000,000 less the aggregate outstanding balance of mortgage loans secured by capital reserve funds pursuant to section 1032 for all other revenue obligation securities issued pursuant to this subchapter; ~~and~~

E. The sum of \$120,000,000 consisting of not more than \$100,000,000 for loans and up to \$20,000,000 for use of bond proceeds to fund

capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for paper industry job retention projects.

The amount of revenue obligation securities issued to refund securities previously issued may not be taken into account in determining the principal amount of securities outstanding, provided that proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the authority that may at any time be outstanding for any purpose, the amounts of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments are valued as of any date of calculation at their then current accreted value rather than their face value.

Sec. 9. Loans authorized. The Finance Authority of Maine may make loans for paper industry job retention projects, as defined in the Maine Revised Statutes, Title 10, section 963-A from up to \$100,000,000 of the proceeds of revenue obligation securities secured by capital reserve funds pursuant to Title 10, section 1053. Notwithstanding any provision of Title 10, chapter 110, loans may aggregate up to \$100,000,000 plus an amount determined by the Finance Authority of Maine of up to an additional aggregate of \$20,000,000 to fund any capital reserve fund established by the authority for these loans. Revenue obligation securities secured by capital reserve funds pursuant to Title 10, section 1053 may not be issued for a paper industry job retention project approved by the authority after February 1, 2001. Any revenue obligation securities issued pursuant to Title 10, section 1053, including revenue obligation securities issued for a paper industry job retention project, are limited obligations of the Finance Authority of Maine payable from revenues from borrowers and any capital reserve funds pledged for those securities as those funds are administered under Title 10, chapter 110, subchapter III and are not payable from any other assets or funds of the Finance Authority of Maine.

Effective June 11, 1999.

CHAPTER 485

H.P. 271 - L.D. 379

An Act to Provide Tax-exempt Status to Organizations That Teach Reading

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

Sec. 1. 36 MRSA §1760, sub-§16, as amended by PL 1987, c. 343, §4, is further amended to read:

16. Hospitals, research centers, churches and schools. Sales to incorporated hospitals, incorporated nonprofit nursing homes licensed by the Department of Human Services, incorporated nonprofit boarding care facilities licensed by the Department of Human Services, incorporated nonprofit home health care agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended, incorporated nonprofit rural community health centers engaged in, or providing facilities for, the delivery of comprehensive primary health care, incorporated nonprofit dental health centers, institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research or for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology or operating educational television or radio stations, schools, incorporated nonprofit organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia and regularly organized churches or houses of religious worship, excepting sales, storage or use in activities ~~which~~ that are mainly commercial enterprises. "Schools" means incorporated nonstock educational institutions, including institutions empowered to confer educational, literary or academic degrees, ~~which~~ that have a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year, ~~which~~ and that keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual.

See title page for effective date.

CHAPTER 486

H.P. 316 - L.D. 432

An Act to Adopt the Uniform Child Custody Jurisdiction and Enforcement Act

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

Sec. 1. 19-A MRSA §1657, sub-§3, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

3. Uniform Child Custody Jurisdiction and Enforcement Act. The jurisdiction granted by this section to make or alter an order concerning parental rights and responsibilities with respect to a minor child