

MAINE STATE LEGISLATURE

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(EMERGENCY)
(New Draft of S.P. 356, L.D. 1077)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1691

S.P. 583

In Senate, May 24, 1983

Reported by Senator Hichens of York from the Committee on Education and printed under Joint Rule 2.

Original bill presented by Senator Clark of Cumberland. Cosponsored by Representative Locke of Sebec, Representative Matthews of Caribou and Representative Brown of Gorham.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

**AN ACT Concerning Confidential Records
and State Certification of Educational
Personnel.**

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

Whereas, there is confusion regarding the manner in which professional certificates can be denied, revoked or suspended by actions of the Commissioner of Educational and Cultural Services; and

Whereas, the Legislature finds that one ground for the denial, revocation or suspension of a professional certificate is conduct involving child abuse which should be dealt with immediately; and

1 Whereas, in the judgment of the Legislature,
2 these facts create an emergency within the meaning of
3 the Constitution of Maine and require the following
4 legislation as immediately necessary for the preser-
5 vation of the public peace, health and safety; now,
6 therefore,

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

9 Sec. 1. 20 MRSA §807, sub-§4 is enacted to read:

10 4. Commissioner's review. The commissioner
11 shall have access to any of the records or documents
12 designated as confidential in this section in carry-
13 ing out his duties pursuant to sections 1751 to 1754.

14 Sec. 2. 20 MRSA §1751, as amended by PL 1975, c.
15 551, §2, is further amended by adding at the end a
16 new paragraph to read:

17 Evidence that an applicant for initial certifica-
18 tion or renewal has injured the health or welfare of
19 a child through physical or sexual abuse or exploi-
20 tation shall be grounds for denial of a certificate.
21 Notwithstanding the provisions of Title 5, chapter
22 341, any person who within 5 years of the application
23 for initial certification or renewal has been convicted
24 in any state or federal court of a criminal
25 offense involving the physical or sexual abuse or
26 exploitation of a child may be presumed by the com-
27 missioner to lack good moral character for purposes
28 of this chapter. This presumption shall be a rebut-
29 table presumption. The commissioner shall be enti-
30 tled to consider all records of prior criminal con-
31 victions involving child abuse or exploitation in
32 determining an applicant's eligibility for a certifi-
33 cate.

34 Sec. 3. 20 MRSA §1752, sub-§4 is enacted to
35 read:

36 4. Complaints confidential. Complaints, charges
37 or accusations made and investigated pursuant to
38 section 1755, replies to those complaints, charges or
39 accusations and any other information or materials
40 that may result in action to deny, revoke or suspend

1 certification shall be confidential. Any charges or
2 information filed by the commissioner with the Admin-
3 istrative Court in support of a petition to revoke or
4 suspend certification and any decision of the court
5 shall be public records.

6 Sec. 4. 20 MRSA §§1755 and 1756 are enacted to
7 read:

8 §1755. Grounds for revocation or suspension of cer-
9 tificate

10 The following shall be grounds for revocation or
11 suspension of a certificate issued under this Title:

12 1. Child abuse conduct. Evidence that a person
13 has injured the health or welfare of a child through
14 physical or sexual abuse or exploitation shall be
15 grounds for revocation or suspension of a certifi-
16 cate. Notwithstanding the provisions of Title 5,
17 chapter 341, a certified court record that a person
18 certified under this Title was convicted in any state
19 or federal court of a criminal offense involving the
20 physical or sexual abuse or exploitation of a child
21 within the previous 5 years shall be sufficient
22 grounds for revocation or suspension of that person's
23 certificate; and

24 2. Other grounds. Such other grounds as shall
25 be established by rule of the State Board of Educa-
26 tion.

27 §1756. Reinstatement of certificate

28 The following provisions shall govern the rein-
29 statement of any certificate revoked for reasons of
30 child abuse.

31 1. Child abuse or exploitation. Notwithstanding
32 the provisions of Title 5, chapter 341, no certifi-
33 cate revoked for reasons of child abuse or exploi-
34 tation shall be reinstated within 5 years of the
35 revocation and in no case in less than 3 years from
36 the expiration of any discharge from imprisonment for
37 a criminal conviction involving child abuse or
38 exploitation.

1 2. Rehabilitation. In determining whether a
2 certificate may be reinstated, the commissioner shall
3 determine whether the applicant has been sufficiently
4 rehabilitated to warrant the public trust. The
5 applicant shall be required to demonstrate sufficient
6 evidence of rehabilitation, notwithstanding the
7 provisions of Title 5, chapter 341, and the commis-
8 sioner shall state in writing the basis for any deci-
9 sion which denies reinstatement of a certificate.

10 3. Denial of reinstatement. Denial of rein-
11 statement may be appealed to the Superior Court.

12 Sec. 5. 20-A MRSA §6101, sub-§3 is enacted to
13 read:

14 3. Commissioner's review. The commissioner
15 shall have access to any of the records or documents
16 designated as confidential in this section in carry-
17 ing out his duties pursuant to sections 13001 to
18 13003.

19 Sec. 6. 20-A MRSA §13001, sub-§1, ¶¶D and E, as
20 enacted by PL 1981, c. 693, §§5 and 8, are amended to
21 read:

22 D. Seek a revocation or suspension of a certifi-
23 cate in the Administrative Court; and

24 E. The state board may adopt rules to carry out
25 this subsection; and

26 Sec. 7. 20-A MRSA §13001, sub-§1, ¶F is enacted
27 to read:

28 F. Enter into a consent agreement with any cer-
29 tificated person in lieu of initiating or com-
30 pleting a proceeding in the Administrative Court.

31 Sec. 8. 20-A MRSA §13001, sub-§5 is enacted to
32 read:

33 5. Denial of certificate. Evidence that an
34 applicant for initial certification or renewal has
35 injured the health or welfare of a child through
36 physical or sexual abuse or exploitation shall be
37 grounds for denial of a certificate. Notwithstanding

1 the provisions of Title 5, chapter 341, any person
2 who within 5 years of the application for initial
3 certification or renewal has been convicted in any
4 state or federal court of a criminal offense involv-
5 ing the physical or sexual abuse or exploitation of a
6 child may be presumed by the commissioner to lack
7 good moral character for purposes of this chapter.
8 This presumption shall be a rebuttable presumption.
9 Notwithstanding the provisions of Title 5, chapter
10 341, the commissioner shall be entitled to consider
11 all records of prior criminal convictions involving
12 child abuse or exploitation in determining an appli-
13 cant's eligibility for a certificate.

14 Sec. 9. 20-A MRSA §13001, sub-§6 is enacted to
15 read:

16 6. Grounds for revocation or suspension of a
17 certificate. The following shall be grounds for
18 revocation or suspension of a certificate issued
19 under this Title.

20 A. Evidence that a person has injured the health
21 or welfare of a child through physical or sexual
22 abuse or exploitation shall be grounds for revo-
23 cation or suspension of a certifi-
24 cate. Notwithstanding the provisions of Title 5,
25 chapter 341, a certified court record that a
26 person certificated under this Title was con-
27 vinced in any state or federal court of a crimi-
28 nal offense involving the physical or sexual
29 abuse or exploitation of a child within the pre-
30 vious 5 years shall be sufficient grounds for
31 revocation or suspension of that person's certifi-
32 cate; and

33 B. Such other grounds as may be established by
34 rules of the State Board of Education.

35 Sec. 10. 20-A MRSA §13001, sub-§7 is enacted to
36 read:

37 7. Reinstatement of certificate. The following
38 provisions shall govern the reinstatement of any cer-
39 tificate revoked for reasons of child abuse or
40 exploitation.

1 A. Notwithstanding the provisions of Title 5,
2 chapter 341, no certificate revoked for reasons
3 of child abuse or exploitation shall be rein-
4 stated within 5 years of the revocation and in no
5 case less than 3 years from the expiration of
6 probation or parole of discharge from imprison-
7 ment for a criminal conviction involving child
8 abuse or exploitation.

9 B. In determining whether a certificate may be
10 reinstated, the commissioner shall determine
11 whether the applicant has been sufficiently reha-
12 bilitated to warrant the public trust. The
13 applicant shall be required to demonstrate suffi-
14 cient evidence of rehabilitation, notwithstanding
15 the provisions of Title 5, chapter 341, and the
16 commissioner shall state in writing the basis for
17 any decision which denies reinstatement of a cer-
18 tificate.

19 C. Denial of reinstatement may be appealed to
20 the Superior Court.

21 Sec. 11. 20-A MRSA §13004, sub-§2-A is enacted
22 to read:

23 2-A. Complaints confidential. Complaints,
24 charges or accusations made and investigated pursuant
25 to section 13001, replies to those complaints,
26 charges or accusations, and any other information or
27 materials that may result in action to deny, revoke
28 or suspend certification shall be confidential. Any
29 charges or information filed by the commissioner with
30 the Administrative Court insupport of a petition to
31 revoke or suspend certification and any decision of
32 the court shall be public records.

33 Sec. 12. 22 MRSA §4008, sub-§3, ¶¶C and D, as
34 enacted by PL 1979, c. 733, §18, are amended to read:

35 C. A grand jury on its determination that access
36 to those records is necessary in the conduct of
37 its official business; ~~and~~

38 D. An appropriate state executive or legislative
39 official with responsibility for child protection

1 services in carrying out his official functions,
2 provided that no personally identifying informa-
3 tion may be made available unless necessary to
4 his functions-; and

5 Sec. 13. 22 MRSA §4008, sub-§3, ¶E is enacted to
6 read:

7 E. Where the information concerns teachers and
8 other professional personnel issued certificates
9 under Title 20-A, the information shall be dis-
10 closed to the Commissioner of Educational and
11 Cultural Services.

12 **Emergency clause.** In view of the emergency cited
13 in the preamble, sections 1, 2, 3, 4, 12 and 13 shall
14 take effect when approved. Sections 5, 6, 7, 8, 9,
15 10 and 11 shall take effect July 2, 1983.

16 STATEMENT OF FACT

17 This new draft has 2 major purposes. First, it
18 is intended to reconcile conflicting statutory provi-
19 sions relating to the confidentiality of records of
20 educational personnel and child abuse investigations
21 and the authority of the Commissioner of Educational
22 and Cultural Services to take action toward the revo-
23 cation or suspension of certificates of those person-
24 nel. Current statutes which make confidential some
25 personnel and investigatory records prevent the com-
26 missioner's access to information which could form
27 the basis for a complaint in the Administrative Court
28 to revoke certificates on account of child abuse by
29 a teacher or other educational employee.

30 Second, the new draft is intended to clarify cer-
31 tain provisions of the education law, Titles 20 and
32 20-A, concerning the issuance, denial and revocation
33 of certificates to teachers and other educational
34 personnel, explained further as follows.

35 Sections 1 and 5 provide authority for the Com-
36 missioner of Educational and Cultural Services to
37 review the personnel records of the certificated
38 employees of any school administrative unit in inves-
39 tigating a complaint which could lead to revocation
40 or suspension of a state certificate.

1 Sections 3 and 11 enact new language concerning
2 records compiled by the Commissioner of Educational
3 and Cultural Services in any investigation leading to
4 action to deny, revoke or suspend certification.
5 Paralleling existing statutory language on personnel
6 records, the new provision keeps confidential these
7 investigatory records until such time as a formal
8 complaint is taken to the Administrative Court. At
9 that time, charges, answers to the charges and court
10 proceedings are public matters.

11 Sections 12 and 13 provide that investigatory
12 records of the Department of Human Services on child
13 abuse be disclosed to the Commissioner of Educational
14 and Cultural Services, if those records are relevant
15 to the commissioner's investigation and court action
16 to revoke or suspend the certificate of a teacher or
17 other educational professional.

18 Sections 2 and 8 provide clear authority for the
19 commissioner to deny initial certification or renewal
20 of certification to any person where there is evi-
21 dence of child abuse or exploitation. Where there is
22 a certified court record of a criminal conviction of
23 child abuse or exploitation, the commissioner may
24 presume that the requisite "good moral character" is
25 lacking and deny the certificate. Such denials are
26 appealable to court as "final agency actions" under
27 the Maine Administrative Procedure Act.

28 Sections 4 and 9 establish that evidence of child
29 abuse or exploitation is to be considered grounds for
30 revocation or suspension of a certificate. A certi-
31 fied court record of a criminal conviction of child
32 abuse or exploitation is sufficient evidence in the
33 Administrative Court for revocation or suspension of
34 a certificate. Any other grounds for revocation or
35 suspension are to be issued as rules of the State
36 Board of Education, pursuant to existing statutory
37 authority.

38 Sections 4 and 10 limit the reinstatement of cer-
39 tificates in cases where certificates were revoked
40 because of child abuse or exploitation.

41 Section 6 explicitly authorizes the suspension of
42 certificates by the Administrative Court in addition

1 to the revocation of certificates. This parallels
2 other state licensing laws which authorize suspen-
3 sions for specific periods of time as well as com-
4 plete revocations of licenses. Section 6 also
5 authorizes the Commissioner of Educational and Cul-
6 tural Services to enter into consent agreements with
7 teachers and other educational personnel. This
8 alternative would avoid unnecessary actions in Admin-
9 istrative Court where the certificate holder is will-
10 ing to relinquish the certificate voluntarily. It
11 parallels similar language in other state licensing
12 statutes.

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