

| 1 | (New Draft of S.P. 485, L.D. 1501) |
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| 2 3 | FIRST REGULAR SESSION |
| 4 5 | ONE HUNDRED AND ELEVENTH LEGISLATURE |
| 6 7 | Legislative Document No. 1728 |
| 8 | S.P. 602 In Senate, June 2, 1983 |
| 9 10 | Reported by Senator Bustin of Kennebec from the Committee on Health and Institutional Services and printed under Joint Rule 2. Original bill presented by Senator Bustin of Kennebec. Cosponsored by |
| 11 | Senator Hayes of Penobscot, Representative Clark of Millinocket and Representative Parent of Benton. |
| | JOY J. O'BRIEN, Secretary of the Senate |
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| 13 14 | STATE OF MAINE |
| 15 16 17 | IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-THREE |
| 18 19 20 21 22 | AN ACT to Limit Payments to Health Care Institutions which Engage Persons to Defeat the Organization of Collective Bargaining Units. |
| 23 24 | Be it enacted by the People of the State of Maine as follows: |
| 25 | 22 MRSA c. 405-B is enacted to read: |
| 26 | CHAPTER 405-B |
| 27 | LIMITATION ON PAYMENTS TO HEALTH CARE INSTITUTIONS |
| 28 29 | §1861. Limitation on payments to health care insti- tutions |

| 1 | The Legislature is concerned that certain health |
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| 2 | care institutions have engaged persons with the |
| 3 | care institutions have engaged persons with the intent to interfere with, inhibit or disrupt the free |
| 4 | exercise of the right of all employees to organize |
| 5 | and choose representatives for the purpose of nego- |
| 6 | tiating the terms and conditions of their employment |
| 7 | or other mutual aid or protection as provided in |
| 8 | Title 26, section 911. The Legislature declares that |
| 9 | it is consistent with public policy to prohibit the |
| 10 | use of funds received from the State for the purpose |
| 11 | of engaging those persons. The Legislature acknowl- |
| 12 | edges the right of employers to communicate with |
| 13 | employees concerning the issue of unionization and |
| 14 | further recognizes that employers may obtain counsel |
| 15 | for advice and assistance. |
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| 16 | §1862. Definitions |
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| 17 | As used in this chapter, unless the context |
| 18 | otherwise indicates, the following terms have the |
| 19 | following meanings. |
| 20 | 1 Disallourd annualituus "Disallourd annuali |
| 20 21 | 1. Disallowed expenditure. "Disallowed expendi- |
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| | ture" means an amount paid to any person for those |
| 22 | acts or services rendered, which result in: |
| 22 | acts or services rendered, which result in: |
| | acts or services rendered, which result in: A. The commission of an unfair labor practice or |
| 22 23 | acts or services rendered, which result in: |
| 22 23 | acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- |
| 22 23 24 | <pre>acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- suant to the United States Code, Title 29,</pre> |
| 22 23 24 25 | acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- |
| 22 23 24 25 26 27 | A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- suant to the United States Code, Title 29, Section 158; |
| 22 23 24 25 26 27 28 | <pre>acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- suant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pur-</pre> |
| 22 23 24 25 26 27 28 29 | <pre>acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- suant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pur- suant to Title 26, chapter 7, 9, 9-A or 9-B;</pre> |
| 22 23 24 25 26 27 28 | <pre>acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- suant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pur-</pre> |
| 22 23 24 25 26 27 28 29 30 | <pre>acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- suant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pur- suant to Title 26, chapter 7, 9, 9-A or 9-B; or</pre> |
| 22 23 24 25 26 27 28 29 30 31 | <pre>acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- suant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pur- suant to Title 26, chapter 7, 9, 9-A or 9-B; or (3) A court of competent jurisdiction pur-</pre> |
| 22 23 24 25 26 27 28 29 30 | <pre>acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- suant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pur- suant to Title 26, chapter 7, 9, 9-A or 9-B; or</pre> |
| 22 23 24 25 26 27 28 29 30 31 32 | <pre>acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pur- suant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pur- suant to Title 26, chapter 7, 9, 9-A or 9-B; or (3) A court of competent jurisdiction pur- suant to Title 26, section 911; and</pre> |
| 22 23 24 25 26 27 28 29 30 31 | acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pursuant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pursuant to Title 26, chapter 7, 9, 9-A or 9-B; or (3) A court of competent jurisdiction pursuant to Title 26, section 911; and B. Influencing employees respecting |
| 22 23 24 25 26 27 28 29 30 31 32 33 34 | acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pursuant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pursuant to Title 26, chapter 7, 9, 9-A or 9-B; or (3) A court of competent jurisdiction pursuant to Title 26, section 911; and B. Influencing employees respecting unionization, when costs for these activities are |
| 22 23 24 25 26 27 28 29 30 31 32 33 34 35 | acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pursuant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pursuant to Title 26, chapter 7, 9, 9-A or 9-B; or (3) A court of competent jurisdiction pursuant to Title 26, section 911; and B. Influencing employees respecting unionization, when costs for these activities are disallowed for reimbursement pursuant to Medicare |
| 22 23 24 25 26 27 28 29 30 31 32 33 34 | acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pursuant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pursuant to Title 26, chapter 7, 9, 9-A or 9-B; or (3) A court of competent jurisdiction pursuant to Title 26, section 911; and B. Influencing employees respecting unionization, when costs for these activities are |
| 22 23 24 25 26 27 28 29 30 31 32 33 34 35 | acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pursuant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pursuant to Title 26, chapter 7, 9, 9-A or 9-B; or (3) A court of competent jurisdiction pursuant to Title 26, section 911; and B. Influencing employees respecting unionization, when costs for these activities are disallowed for reimbursement pursuant to Medicare law and regulation. 2. Health care institution. "Health care insti- |
| 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 | acts or services rendered, which result in: A. The commission of an unfair labor practice or prohibited practice as determined by: (1) The National Labor Relations Board pursuant to the United States Code, Title 29, Section 158; (2) The Maine Labor Relations Board pursuant to Title 26, chapter 7, 9, 9-A or 9-B; or (3) A court of competent jurisdiction pursuant to Title 26, section 911; and B. Influencing employees respecting unionization, when costs for these activities are disallowed for reimbursement pursuant to Medicare |

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corporation, including county or local government 1 unit, required to obtain a license pursuant to chap-2 3 ter 405. 3. Person. "Person" means any person, partner-4 ship, association or corporation engaged or employed 5 6 by a health care institution. 7 4. Proportional share. "Proportional share" means the revenue received from the State during the 8 previous 12 months, divided by the sum of revenue 9 received from the State, 3rd party payors and 10 patients during the corresponding 12 months. 11 12 §1863. Recovery of state funds 13 Upon notification that a health care institution has paid an amount for a disallowed expenditure, the 14 department shall make a determination as to the 15 amount of the disallowed expenditure. The department shall withhold an amount equal to a proportional 16 17 18 share of the amount of the disallowed expenditure, 19 according to a schedule determined by the department, from future payments of medical assistance reimburse-20 ments to be received by the health care institution. 21 If that agency or court determination of a violation 22 is under appeal, the withholding shall be stayed 23 24 pending a final adverse decision against the institu-25 tion. 26 §1864. Expenditures not included 27 the extent consistent with Medicare and То Medicaid law and regulation, disallowed expenditures 28 shall not include amounts paid to any person for ser-29 30 vices rendered as follows: 1. Unfair labor practice. In the commission of 31 32 any unfair labor practice out of necessity to obtain 33 judicial review of a unit determination finding; 34 2. Contract negotiations. Reasonable expenses 35 for contract negotiations or preparations therefor; 36 3. Disputes concerning contracts. Reasonable expenses associated with disputes concerning the 37 38 interpretation of contracts;

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| 1 2 | 4. Attorneys' fees. Expenses for attorneys' fees arising out a court or agency proceeding or |
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| 3 | appeal or in preparation therefor; or |
| 4 5 6 7 | 5. Educational instruction. Reasonable expenses for educational instruction of supervisors or manage- ment employees concerning state or federal labor laws. |
| 8 | §1865. Reporting requirement |
| 9 10 11 12 13 14 15 16 17 18 | 1. Report. Each health care institution which receives funds from the department shall annually report to the department the amount paid to any person for the purpose of influencing its employees, respecting unionization, or attempts to coerce employees to otherwise interfere with or restrain the exercise of employee rights to organize and choose representatives for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. |
| 19 20 21 22 | 2. Violation. Violation of this section shall result in an administrative fine of up to \$500 for each offense, as determined pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. |
| 23 | <u>§1866.</u> Rules |
| 24 25 26 27 | The Commissioner of Human Services shall adopt rules in order to implement this chapter, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. |
| 28 | STATEMENT OF FACT |
| 29 30 31 32 33 | In Title 22, section 1861, the Legislature's "finding" is modified to a "concern," and a new sen- tence has been added acknowledging the employers' role in providing information about unionization and right to seek assistance and counsel. |
| 34 35 36 | In Title 22, section 1862, there is a new defini- tion of "disallowed expenditure," which replaces the definition of "prohibited practice." |

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1 In Title 22, section 1863, the department's ac-2 tion is now on the basis of notification of a disal-3 lowed expenditure, consistent with the new defini-4 tion, and a new provision has been added that the 5 amount in question will not be withheld until a final 6 decision against the institution is made.

7 Title 22, section 1864 further specifies the 8 amounts which are considered in disallowed expendi-9 tures.

10 In Title 22, section 1865, subsection 1, a new 11 phrase has been added explaining a restriction on 12 coercing employees. In Title 22, section 1865, sub-13 section 2, the fine has been decreased from \$5,000 to 14 \$500.

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