

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 532

6
7 S.P. 198

In Senate, February 13, 1985

8 Reference to the Committee on Aging, Retirement and Veterans
9 suggested and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Gauvreau of Androscoggin.

11 Cosponsored by Representative Manning of Portland, Senator Trafton of
Androscoggin and Representative Hickey of Augusta.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Conform Maine Committee on Aging
18 Legislation with the 1981 Older
19 Americans Act Amendments.
20

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

23 22 MRSa §5112, sub-§2, as amended by PL 1981, c.
24 72, §§1 to 3, is further amended to read:

25 2. Advocate. Serve as an advocate on behalf of
26 older people promoting and assisting activities de-
27 signed to meet at the national, state and community
28 levels the problems of older people. The committee
29 shall serve as an ombudsman on behalf of individual
30 citizens and older people as a class in matters under
31 the jurisdiction of State Government. It shall be a
32 spokesman on behalf of older people to the director,
33 commissioner, Governor, Legislature, public-at-large
34 and Federal Government.

1 In order to serve as advocate and ombudsman for older
2 people, the committee shall have the power to enter
3 onto the premises of any congregate housing facility
4 certified according to section 5154, any adult foster
5 care facility approved by the State according to sec-
6 tion 7908, any boarding care facility licensed ac-
7 ording to section 7801 and any nursing home facility
8 licensed according to section 1817 in order to inves-
9 tigate complaints concerning those facilities. To
10 carry out this function, the committee may enter onto
11 the premises of any congregate housing facility, any
12 adult foster care facility, any boarding care facili-
13 ty or any nursing home during the course of an inves-
14 tigation, speak privately with any individual therein
15 who consents to the conversation and inspect and copy
16 all records pertaining to a resident held by a facil-
17 ity or home, provided that the resident, or the legal
18 representative of the resident, consents in writing
19 to that inspection. The consent, where required and
20 not obtainable in writing, may be conveyed orally or
21 otherwise to the staff of the facility or home. Where
22 a resident is not competent to grant consent and has
23 no legal representative, the committee may inspect
24 the resident's records and may make such copies that
25 do not contain personally identifiable material with-
26 out the written consent of a duly appointed legal
27 representative. The committee may authorize up to 25
28 persons, including committee members, staff of the
29 committee and other citizens, to carry out this func-
30 tion of the committee pursuant to this subsection.
31 Appropriate identification shall be issued to all
32 such persons. The committee shall renew the authori-
33 zation and reissue identification annually. The find-
34 ings of the committee shall be available to the pub-
35 lic upon request.

36 No information or records maintained by the committee
37 relating to complaints may be disclosed unless the
38 ombudsman authorizes the disclosure; and the
39 ombudsman shall not disclose the identity of any com-
40 plainant or resident unless:

41 A. The complainant or resident, or a legal rep-
42 resentative of either, consents in writing to the
43 disclosure with respect to that complainant or
44 resident respectively; or

1 B. A court orders the disclosure.

2 A complainant or resident, or legal representative
3 thereof, in providing the consent, may specify to
4 whom such identity may be disclosed and for what pur-
5 poses, in which event no other disclosure is autho-
6 rized.

7 Any person, official or institution who in good faith
8 participates in the registering of a complaint pursu-
9 ant to this subsection, or in good faith investigates
10 that complaint or provides access to those persons
11 carrying out the investigation, about an act or prac-
12 tice in a any certified congregate housing facility,
13 any approved adult foster care facility, any licensed
14 boarding care facility or a any licensed nursing home
15 licensed according to section 5154, 7908, 7801 or
16 1817, respectively, or who participates in a judicial
17 proceeding resulting from that complaint, shall be
18 immune from any civil or criminal liability that oth-
19 erwise might result by reason of these actions. For
20 the purpose of any civil or criminal proceedings,
21 there shall be a rebuttable presumption that any per-
22 son acting pursuant to this subsection did so in good
23 faith.

24 STATEMENT OF FACT

25 The 1981 amendments to the United States Older
26 Americans Act mandate the states to provide assur-
27 ances that a long term care ombudsman program will be
28 established to provide for procedures for appropriate
29 access by the ombudsman program to long term care fa-
30 cilities. Long term care facilities are defined in
31 the federal law as any category of institutions, fos-
32 ter homes or group living arrangements regulated by
33 the State in which a significant number of recipients
34 of Supplemental Security Income benefits reside or
35 are likely to reside.

36 Currently, the Maine Committee on Aging's
37 Ombudsman Program does not have the authority to en-
38 ter onto the premises of an adult foster care facili-
39 ty or other group living environments like congregate
40 housing. The current law only allows the ombudsman

1 to enter onto the premises of boarding and nursing
2 home facilities.

3 The Maine Committee on Aging was advised by the
4 Attorney General's office that the Maine Committee on
5 Aging law must be amended to remedy this problem.
6 This bill amends the law accordingly.

7

1180011285