

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1122, L.D. 1554, Bill, "An Act to Revise the Communicable Disease Law"

Amend the amendment by striking out all of the 19th indented paragraph after the title (page 3, lines 11 to 14 in amendment) and inserting in its place the following:

'Further amend the bill in section 10 in that part designated "~~§808.~~" by striking out all of subsection 2 and inserting in its place the following:

'2. Subpoenas. After notice to the subject of the information or records, the department, with the approval of the Attorney General, may issue subpoenas requiring persons to disclose or provide to the department information or records in their possession that are relevant to an investigation of a report of a public health threat. Approval of the Attorney General may be given when there is clear evidence of substantial public health need for the information sought. The department may apply to the District Court to enforce a subpoena. A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department.'

Further amend the amendment by inserting after the 20th indented paragraph after the title the following:

'Further amend the bill in section 10 in that part designated "~~§809.~~" by striking out all of the 2nd paragraph and inserting in its place the following:

1 'If, following a hearing as provided in section 811, the
2 District Court finds by a preponderance of the evidence that
3 there is probable cause to believe that an individual has a
4 communicable disease, and that the individual has willfully
5 refused the department's request, the District Court shall order
6 the examination of the individual.'

7
8 Further amend the bill in section 10 in that part designated
9 "§810." by striking out all of the first paragraph and inserting
10 in its place the following:

11
12 'Upon the department's submission of an affidavit showing by
13 clear and convincing evidence that the person or property which
14 is the subject of the petition requires immediate custody in
15 order to avoid a clear and immediate public health threat, a
16 judge of the District Court or justice of the Superior Court may
17 grant temporary custody of the subject of the petition to the
18 department and may order specific emergency care, treatment or
19 evaluation.'

20 Further amend the bill in section 10 in that part designated
21 "§810." by striking out all of subsection 1 and inserting in its
22 place the following:

23
24 '1. Orders; ex parte proceedings. Orders under this
25 section may be issued in an ex parte proceeding upon an affidavit
26 which sets forth specific facts of the reasons that prior notice
27 cannot or should not be given, upon which facts the order is
28 sought. An ex parte order may not include orders for emergency
29 care, treatment or evaluation unless the court finds by clear and
30 convincing evidence that such care, treatment or evaluation is
31 immediately necessary. An ex parte order must be served on the
32 subject of the petition immediately upon apprehension.'

33
34 Further amend the amendment in the 31st indented paragraph
35 after the title in subsection 3 by striking out all of paragraph
36 A (page 4, lines 42 to 43 in amendment) and inserting in its
37 place the following:

38
39 'A. The order of the District Court shall remain in effect
40 pending appeal, unless stayed by the Superior Court.'

41
42 Further amend the amendment by striking out all of the 12th
43 indented paragraph from the end (page 5, lines 4 to 9 in
44 amendment) and inserting in its place the following:

45
46 'Further amend the bill in section 10 in that part
47 designated "§813." in subsection 2 by striking out all of the 2nd
48 paragraph (page 14, lines 2 to 16 in L.D.) and inserting in its
49 place the following:

50
51 'The committed patient may request the appointment of a medical

1 review board. Upon motion of the patient, the committing court
2 shall appoint a medical review board to determine whether the
3 patient's medical status permits termination of the commitment.
4 The medical review board shall consist of 3 physicians appointed
5 by the court who shall have training and experience in the
6 treatment of the communicable disease. Upon the request of the
7 patient, the court shall appoint as one member of the board a
8 physician who has training and experience in the treatment of
9 communicable diseases who is selected by the patient. Upon
10 receipt of the findings of the medical review board and any other
11 evidence, the court, after a hearing pursuant to this subsection,
12 may continue or terminate the commitment.'

13
14 Further amend the bill in section 10 in that part designated
15 "§815." by striking out all of subsections 1 and 2 and inserting
16 in their place the following:

17
18 '1. Privileges abrogated. Subject to the limitations
19 imposed by United States Code, Title 42, Sections 290dd-3 and
20 290ee-3, the physician-patient and psychotherapist-patient
21 privileges under the Maine Rules of Evidence and those
22 confidential communications described under Title 5, section
23 19203, Title 24-A, section 4224, Title 32, section 7005 and Title
24 34-B, section 1207, are abrogated to the extent necessary to
25 permit reporting to the Bureau of Health any incidents of
26 notifiable disease; cooperating with the Bureau of Health or an
27 intervention team appointed by the Bureau of Health in
28 investigating a case of a notifiable disease or suspected
29 epidemic, or taking preventive action in such a case; or giving
30 evidence in a proceeding pursuant to this chapter. Information
31 released to the bureau pursuant to this section shall be kept
32 confidential and may not be disclosed by the bureau except as
33 provided in section 824 and Title 5, section 19203, subsection 8.

34
35 2. Limitation. Statements made to a licensed mental health
36 or medical professional in the course of counseling, diagnosis,
37 therapy, treatment or evaluation when the privilege is abrogated
38 under this section may not be used against the client in a
39 criminal proceeding.'

40
41 Further amend the bill in section 10 in that part designated
42 "§816." in subsection 2 in the next to the last line (page 15,
43 line 41 in L.D.) by inserting after "knows" the following: 'or
44 should know' '

45
46 Further amend the amendment by inserting before the
47 statement of fact the following:

48
49 'Further amend the bill by inserting before the statement of
50 fact the following:

51

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FISCAL NOTE

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Enactment of this bill may result in an increase of filings throughout the state court system. The Judicial Department will absorb the additional costs of this increase within existing resources.

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STATEMENT OF FACT

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This amendment clarifies the notice and evidentiary standards to be applied to departmental investigations and to ex parte proceedings under the bill. In addition, this amendment clarifies the limitation on privileged communications and immunity, and adds a fiscal note.

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Filed by Rep. Manning of Portland
Reproduced and distributed under the direction of the Clerk of the House

6/16/89

(Filing No. H-609)