

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2131

H.P. 1546

House of Representatives, January 5, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

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

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

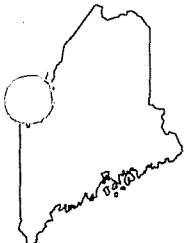
Presented by Representative HICKEY of Augusta.

Cosponsored by Senator CLARK of Cumberland, Representative McSWEENEY of Old Orchard Beach and Representative JALBERT of Lisbon.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Amend the Laws Relating to the Maine Committee on Aging.



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

2
3 Sec. 1. 22 MRSA §5108-A, sub-§2, ¶D is enacted to read:

4
5 D. No member of the committee may have a conflict of
6 interest as prohibited by the amended federal 1987 Older
7 Americans Act (OAA), 42 United States Code, Section 3027 (a)
8 (12) (F) (i, ii and iii).

10 Sec. 2. 22 MRSA §5108-A, sub-§5, as enacted by PL 1987, c. 58,
11 §2, is amended to read:

12
13 5. Chair; number of meetings. The Governor shall designate
14 the chairman chair for a term of 2 years from among the members
15 appointed to the committee. The chair may be reappointed by the
16 Governor. The committee shall meet at the call of the chairman
17 chair, but not less often than 4 times a year.

18
19 Sec. 3. 22 MRSA §5112, as amended by PL 1989, c. 68, Pt. C,
20 §3 and c. 502, Pt. A, §78, is further amended to read:

21 §5112. Powers and duties

22
23 The committee shall have the power and duty to:

24
25 1. Advise, consult and assist. Advise, consult and assist
26 the Executive and Legislative Branches of State Government,
27 especially the Governor, on activities of State Government
28 related to older people. ~~The committee shall be solely advisory~~
29 ~~in nature.~~ The committee may make recommendations regarding any
30 function intended to benefit older people. If findings, comments
31 or recommendations of the committee vary from or are in addition
32 to those of the any state bureau or department, such statements
33 of the committee shall be sent to the respective branches of
34 State Government as attachments to those submitted by the that
35 bureau or department. Recommendations may take the form of
36 proposed budgetary, legislative or policy actions.

37
38 2. Advocate. Serve as an advocate on behalf of older
39 people promoting and assisting activities designed to meet
40 enhance at the national, state and community levels the problems
41 well-being of older people. The committee shall serve as an
42 ombudsman on behalf of individual citizens and older people as a
43 class in matters under the jurisdiction of State Government. It
44 shall be a spokesman voice on behalf of older people to the
45 ~~director, commissioner~~ officers of State Government, Governor,
46 Legislature, public-at-large and Federal Government.

47
48
49 In order to serve as advocate and ombudsman for older people, the
50 committee shall have the power to enter onto the premises of any
51 boarding care facility licensed according to section 7801 and any
52 nursing home facility licensed according to section 1817 in order

2 to investigate complaints concerning those facilities. In
3 addition, the committee shall investigate complaints received on
4 behalf of individuals receiving long-term care services provided
5 by the home-based care programs, Medicaid waiver program,
6 licensed home health agencies, certified homemaker agencies and
7 licensed adult day care agencies. To carry out this function,
8 the any committee member, staff, or volunteer who has been given
9 such power, may enter onto the premises of any adult foster care
10 facility, any boarding care facility or any nursing home during
11 the course of an investigation, speak privately with any
12 individual therein who consents to the conversation and inspect
13 and copy all records pertaining to a resident held by a facility
14 ~~ex-home,~~ provided that the resident, or the legal representative
15 of the resident, consents in writing to that inspection. The
16 consent, where required and not obtainable in writing, may be
17 conveyed orally or otherwise to the staff of the facility or
18 home. Where a resident is not competent to grant consent and has
19 no legal representative, the committee may inspect the resident's
20 records and may make such copies that do not contain personally
21 identifiable material without the written consent of a duly
22 appointed legal representative. The committee may authorize up to
23 25 persons, including in addition to committee members, and staff
24 of the committee and other citizens, to carry out this function
25 ~~of the committee pursuant to this subsection.~~ Appropriate
26 identification shall be issued to all such persons. In accordance
27 with the amended federal 1987 Older Americans Act (OAA), 42
28 United States Code, no one may serve as an ombudsman without
29 training by committee staff as to the rights and responsibilities
30 of ombudsmen, or without a specific plan of action under
31 direction of committee staff. The committee shall renew the
32 authorization and reissue issue identification annually. The
33 findings of the committee shall be available to the public upon
34 request.

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

39 A. The complainant or resident, or a legal representative
40 of either, consents in writing to the disclosure with
41 respect to that complainant or resident respectively; or

42 B. A court orders the disclosure.

43 A complainant or resident, or legal representative thereof, in
44 providing the consent, may specify to whom such identity may be
45 disclosed and for what purposes, in which event no other
46 disclosure is authorized.

47 Any person, official or institution who in good faith
48 participates in the registering of a complaint pursuant to this
49 subsection, or in good faith investigates that complaint or
50

2 provides access to those persons carrying out the investigation,
3 about an act or practice in any licensed boarding care facility
4 or any licensed nursing home licensed according to section 5154,
5 7801 or 1817, respectively, or who participates in a judicial
6 proceeding resulting from that complaint, shall be immune from
7 any civil or criminal liability that otherwise might result by
8 reason of these actions. For the purpose of any civil or criminal
9 proceedings, there shall be a rebuttable presumption that any
10 person acting pursuant to this subsection did so in good faith.
11 Any person, official or institution who in good faith
12 participates in the registering of a complaint pursuant to this
13 subsection, or in good faith investigates that complaint or
14 provides access to those persons carrying out the investigation,
15 about an act or practice in any licensed boarding care facility
16 or any licensed nursing home licensed according to section 5154,
17 7801 or 1817, respectively, or who participates in a judicial
18 proceeding resulting from that complaint, shall be immune from
19 any civil or criminal liability that otherwise might result by
20 reason of these actions. For the purpose of any civil or criminal
21 proceedings, there shall be a rebuttable presumption that any
22 person acting pursuant to this subsection did so in good faith.;

23 **3. Advisory committee.** Serve as the advisory committee on
24 behalf of the State ~~of Maine~~ elderly of the State to the
25 pertinent state agency agencies relating to or as may be required
26 by state or federal laws and regulations ~~governing administration~~
27 ~~of programs authorized by this Part and so much of the several~~
28 ~~Acts, amendments and successors to them enacted by the people of~~
29 ~~the State of Maine and those authorized by the several United~~
30 ~~States Acts, amendments and successors to them as relate to elder~~
31 people their successors, including, but not limited to:

32 A. The Priority Social Services Act of 1973 including only
33 coordinated elderly programs, meals for older people and
34 transportation for the elderly;

35 B. The Elderly Householders Tax and Rent Refund Act of 1971;

36 C. Chapter 470 of the public laws of 1969 creating the
37 State Housing Authority;

38 D. The ~~United States~~ federal Older Americans Act of 1965;
39 and

40 E. Title IV or Title VI, or their successors or amendments
41 or additions thereto of the United States Social Security
42 Act, as amended, including only so much thereof as relates
43 to older people.

44 The committee shall advise regarding state and federal plans,
45 policies, programs and other activities relating to the older
46 people ~~in Maine~~ of the State. The committee shall submit to the
47 federal or state agencies its recommendations and comments on the
48

2 state plan and any revisions thereof and or other pertinent
3 reports to the federal or state agencies. Statements at variance
4 with or in addition to those of the bureau or the department
5 reports shall be attached to the plan or reports upon submission
6 by the bureau to agencies of the United States Government or to
7 state agencies-;

8 4. Review committee. ~~Serve~~ through Authorize a
9 subcommittee of the committee, consisting of 5 persons, including
10 the chairman and 4 other members appointed by the chairman with
11 the advice and consent of the Governor, ~~as the review committee~~
12 on behalf of the State of Maine chair to be responsible for
13 analysis of proposals and submission of advisory recommendations
14 to the director concerning the acceptability of proposals
15 requesting award of state-administered grant funds under
16 subsection 3, paragraphs A and D. In order to insure coordination
17 and prevent duplication of services, the committee shall review
18 and comment on, under its own initiative or at the request of any
19 state or federal department or agency, any proposed agreement or
20 agreements from any agency or organization within the State to a
21 state or federal department or agency for assistance related to
22 meeting the needs of older persons-;

24 5. Review and evaluation. Review and evaluate, on a
25 continuing basis in consultation with ~~the bureau for the purpose~~
26 of determining the value and impact on the lives of older people
27 the appropriate state agency, state and federal policies
28 regarding Maine's the elderly of the State and programs and other
29 activities affecting the elderly conducted or assisted by any
30 state departments or agencies. to determine the value of and
31 impact of such programs or activities on the elderly of the State;
32

34 6. Inform the public. ~~Inform the public in~~ In consultation
35 with the bureau Bureau of Elder and Adult Services, ~~to develop a~~
36 firm public understanding of the current status of the survival
37 of Maine's elderly, including information on effective programs
38 elsewhere in the State or nation, by collecting and disseminating
39 gather and disseminate information on effective programs
40 elsewhere in the State or nation, conducting conduct or
41 emissioning commission studies and publishing publish the
42 results thereof and by issuing issue publications and reports for
43 which a reasonable fee may be charged, in order to improve the
44 public's understanding of the current status of Maine's elderly;

46 7. Public forums. Provide and sponsor public forums,
47 including ~~the conduct of~~ public hearings, ~~sponsorship of~~
48 conferences, workshops and other such meetings to obtain
49 information about, discuss, or publicize the needs of and
50 solutions to problems of older people. The committee shall hold a
state-wide statewide Blaine House Conference on Aging at least
every 2 years and may hold regional conferences and meetings-; and

2 8. Administration. Administer in accordance with current
fiscal and accounting regulations of the State, and in accordance
4 with the philosophy, objectives and authority of this Part, any
funds appropriated for expenditure by the committee or any grants
6 or gifts which may become available, accepted and received by the
committee; and make an annual report which shall be submitted
8 directly to the director, commissioner, Governor and Legislature
not later than September 1st of each year concerning its work,
10 recommendations and interests of the previous fiscal year and
future plans; ~~and~~. The committee shall make such interim reports
12 as it deems advisable.

14

16

STATEMENT OF FACT

18 This bill makes a number of technical changes to the laws
governing the Maine Committee on Aging.