

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)

CR
R. of S.

L.D. 1562

(Filing No. S-532)

2

4

6

8

10

12

14

16

18

20

22

24

26

28

30

32

34

36

38

40

42

44

46

STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 590, L.D. 1562, Bill, "An Act Providing Nursing and Boarding Home Residents with a Right of Action for Violations of Their Resident Rights"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

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

Whereas, public advocacy services for residents of long-term care facilities have been severely diminished; and

Whereas, those residents must be given private means to address their grievances as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §7946, sub-§5, as enacted by PL 1987, c. 774, §4, is repealed.

Sec. 2. 22 MRSA §§7948 and 7949 are enacted to read:

§7948. Right of action

1. Generally. Any resident whose rights have been violated as described in this section may commence a civil action in the

COMMITTEE AMENDMENT

R. of S.

COMMITTEE AMENDMENT "A " to S.P. 590, L.D. 1562

2 Superior Court on that resident's own behalf for injunctive and
3 declaratory relief against any long-term care facility that is
4 alleged to be in violation of any rule described in section 7924
5 or in violation of the rights enumerated in 42 United States
6 Code, Section 1396r, Subsection (c). In order to grant a
7 preliminary or permanent injunction under this section, the
8 Superior Court must find that:

9 A. The plaintiff will suffer irreparable injury if the
10 injunction is not granted;

11 B. The irreparable injury outweighs any harm that granting
12 the injunctive relief would inflict on the defendant;

13 C. The plaintiff has exhibited a likelihood of success on
14 the merits of the case; and

15 D. The public interest will not be adversely affected by
16 granting the injunction.

17 2. Right of action limited. An action may not be commenced
18 under this section until 15 days after the resident has given
19 notice of the violation and an intention to bring suit under this
20 chapter to the commissioner, the Attorney General and each party
21 alleged to be violating the law or rule. The court may waive the
22 15-day notice requirement and issue a temporary restraining order
23 when the plaintiff shows that the alleged violation presents an
24 immediate threat to the plaintiff's health or safety.

25 3. Parties may intervene. In any action brought by the
26 Attorney General or the commissioner under this chapter, any
27 resident who has a right of action under this section may
28 intervene if that resident has a direct interest that is or may
29 be adversely affected by the action and the disposition of the
30 action may impair or impede the resident's ability to protect
31 that interest. The Attorney General and the commissioner may
32 intervene in any action brought by a resident under this
33 section. This subsection does not affect the ability of any
34 party to take action under Title 5, section 9054.

35 4. Service. A copy of the complaint and other pleadings
36 must be delivered to the commissioner and the Attorney General at
37 the time of service on the defendant. Copies of all answers and
38 other documents accompanying the answers must be delivered to the
39 commissioner and the Attorney General at the time of service on
40 the plaintiff.

R. of S.

2 5. Dismissal of action. The court may, on the motion of
3 any party or on its own motion, dismiss any action brought under
4 this section that alleges a de minimis violation of section 7924
5 or of 42 United States Code, Section 1396r, Subsection (c).

6 §7949. No limitation on right of action

8 The remedies provided under section 7948 are in addition to
9 those otherwise available under state or federal law and may not
10 be construed as limiting any other remedies including any remedy
11 available to an individual at common law. Exhaustion of any
12 available administrative remedy is not required prior to
13 commencement of an action under this section.

14 Emergency clause. In view of the emergency cited in the
15 preamble, this Act takes effect when approved.

18 **FISCAL NOTE**

20 The Department of Human Services and the Department of the
21 Attorney General will absorb the costs within their budgeted
22 resources if it becomes necessary to intervene in a civil action
23 brought by nursing and boarding home residents. The additional
24 workload and administrative costs associated with the minimal
25 number of new cases filed in the court system will be absorbed
26 within the budgeted resources of the Judicial Department.
27

30 **STATEMENT OF FACT**

32 The amendment replaces the original bill. The private right
33 of action in the original bill is maintained, but provisions for
34 compensatory damages, lawyers fees and court costs are removed.
35 A provision in the original bill that excluded awards from
36 Medicaid eligibility determinations is also removed. The
37 amendment also adds an emergency preamble, emergency clause and a
38 fiscal note to the bill.

Reported by Senator Gill for the Committee on Human Resources.
Reproduced and Distributed Pursuant to Senate Rule 12.
(1/29/92) (Filing No. S-532)