

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1562

S.P. 590

In Senate, April 17, 1991

Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

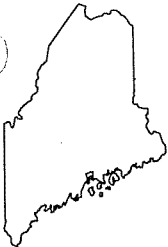
JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CLARK of Cumberland
Cosponsored by Senator GAUVREAU of Androscoggin, Representative FARNSWORTH of
Hallowell and Representative PENDLETON of Scarborough.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

**An Act Providing Nursing and Boarding Home Residents with a Right of
Action for Violations of Their Resident Rights.**



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

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4 Sec. 1. 22 MRSA §7922, sub-§3 is enacted to read:

6 3. Resident rights. "Resident rights" means any right or
8 benefit created or established for the well-being of the resident
10 by the terms of any contract, any state statute or rule or by an
12 applicable federal statute, code, rule or regulation, including,
14 but not limited to, those regulations governing the licensing and
16 functioning of long-term care facilities promulgated by the
18 Department of Human Services, or 42 United States Code, Section
20 1396r, Subsection (c) or any federal regulations promulgated
22 pursuant to that section.

24 Sec. 2. 22 MRSA §7926 is enacted to read:

26 §7926. Private remedies

28 1. Court action. A person who believes that that person's
30 resident rights have been violated as a result of the failure of
32 a long-term care facility to comply with the laws and regulations
34 described in section 7922, subsection 3 may bring an action in
36 the Superior Court for damages and for any other type of relief,
38 including an injunction and declaratory judgment. There is a
40 right to trial by jury in any action brought in Superior Court
42 under this section.

44 2. Compensatory damages. Upon finding that a resident's
46 rights have been violated, compensatory damages are assessed in
48 an amount sufficient to compensate the resident for that
50 violation. The compensation may not be less than the daily per
52 patient rate of payment established for the facility by the
54 Department of Human Services for each day that that violation
56 exists. In the case of a facility not having such an established
58 rate, the average daily total charges per patient of that
60 facility is used in the calculation of damages. In addition,
62 where the deprivation of any such right or benefit is found to
64 have been willful or in reckless disregard of the lawful rights
66 of the patient, punitive damages may be assessed.

68 3. Fees and costs. If the court finds in any action
70 commenced under this section that there has been a violation of a
72 resident's rights, the resident is awarded reasonable attorney's
74 fees and costs incurred in that action in addition to other
76 relief provided for by this section and regardless of the amount
78 in controversy.

80 4. Notices to Attorney General. Upon commencement of any
82 action brought under subsection 1, the resident or the resident's
84 representative shall mail a copy of the complaint or other
86 initial pleading to the Attorney General and upon entry of any

2 judgment or decree in the action shall mail a copy of that
3 judgment or decree to the Attorney General.

4 5. Judgment as evidence. Any permanent injunction or any
5 final court order that provides relief to a resident is prima
6 facie evidence in an administrative enforcement action brought
7 under rules promulgated by the Department of Human Services that
8 the long-term care facility violated the resident's rights. An
9 order of the court confirming agreements that resolve litigation
10 initiated under this section is excluded from the operation of
11 this subsection.

12 6. Nonexclusive remedy. The remedies provided under this
13 section are in addition to those otherwise available under state
14 or federal law and may not be construed as limiting such other
15 remedies including any remedy available to an individual at
16 common law. Exhaustion of any available administrative remedy is
17 not required prior to commencement of an action pursuant to this
18 section.

19 7. Damages excluded from eligibility determination. The
20 amount of any damages recovered by a resident, in an action
21 brought pursuant to this section, is exempt for purposes of
22 determining initial or continuing eligibility for medical
23 assistance under the state Medicaid program. The amount of any
24 damages recovered may not be taken into consideration for or
25 applied to the payment or part payment of the cost of the
26 resident's medical care or services.

27 8. Waiver of rights. Any waiver by a resident or the
28 resident's legal representative of the right to commence an
29 action under this section is void.

30 9. Discrimination. A person may not discriminate against
31 any resident because that resident has brought any action
32 pursuant to this section. A person may not discriminate or
33 retaliate against a resident or employee of a long-term care
34 facility because the resident or employee has provided testimony
35 or other information or evidence for purposes of that action.

42 STATEMENT OF FACT

43 This bill allows residents of long-term care facilities to
44 bring a private court action for damages and other appropriate
45 relief if their rights as defined by state and federal law and
46 regulations are violated by the long-term care facility.
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