

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 430

S.P. 139

In Senate, February 9, 1993

**An Act to Encourage Good Samaritan Drug and Medical Supply
Donations.**

Reference to the Committee on Judiciary 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 SUMMERS of Cumberland.
Cosponsored by Senators: CARPENTER of York, CONLEY of Cumberland, DUTREMBLE of
York, GOULD of Waldo, HALL of Piscataquis, Representatives: JACQUES of Waterville,
NADEAU of Saco, PENDLETON of Scarborough.

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

2
4 Sec. 1. 14 MRSA §164-A is enacted to read:

6 §164-A Drug and medical supply donations; immunity from criminal
and civil liability

8 1. Definitions. As used in this section, unless the
10 context otherwise indicates, the following terms have the
following meanings.

12 A. "Donate" means to give without requiring anything of
14 significant monetary value from the recipient. "Donate"
16 includes giving by a nonprofit organization to another
18 nonprofit organization when the donor organization has
charged a nominal fee to the donee organization, and
distribution by a nonprofit organization to an ultimate
recipient who has been required to pay a nominal fee to the
nonprofit organization.

20 B. "Drug" means:

22 (1) Any article recognized in the official United
24 States pharmacopoeia, the official national formulary
or any supplement to them;

26 (2) Any article intended for use in the diagnosis,
28 cure, mitigation, treatment or prevention of disease in
persons; or

30 (3) Any article, except food, intended to affect the
32 structure or function of the human body, but does not
mean medical supply as defined in this subsection.

34 C. "Gross negligence" means voluntary and conscious conduct
36 by a person who has knowledge at the time of the conduct
that the conduct is harmful to the health or well-being of
38 another person.

40 D. "Intentional misconduct" means conduct by a person who
42 has knowledge at the time of the conduct that the conduct is
harmful to the health or well-being of another person.

44 E. "Medical supply" or "medical supplies" means any
46 instrument, apparatus, implement, contrivance, implant, in
vitro reagent or other similar article including any
component, part or accessory that is:

2 (1) Recognized in the official national formulary, or
4 the official United States pharmacopoeia or any
 supplement to them;

6 (2) Intended for use in the diagnosis of disease or
8 other conditions, or in the cure, mitigation, treatment
 or prevention of disease in persons; or

10 (3) Intended to affect the structure or any function
12 of the human body, that does not achieve any of its
14 principal intended purposes through chemical action
 within or on the human body and that is not dependent
 upon being metabolized for the achievement of any of
 its principal intended purposes.

16 F. "Nonprofit organization" means an incorporated or
18 unincorporated entity that:

20 (1) Is operating for religious, charitable or
 educational purposes; and

22 (2) Does not provide net earnings to, or operate in
24 any other manner that inures to the benefit of, any
 officer, employee or shareholder of the entity.
26 Earnings do not include employee compensation.

28 G. "Person" means an individual, corporation, partnership,
30 organization, association or governmental entity, including,
32 but not limited to, a drug manufacturer, medical supply
34 manufacturer, retail pharmacy, hospital pharmacy,
36 wholesaler, clinic, physician, nurse, hospital, dentist,
38 outpatient health facility nursing home, home health care
 entity or nonprofit drug or medical supply distributor. In
 the case of a corporation, partnership, organization,
 association or governmental entity, "person" includes an
 officer, director, partner, deacon, elder, pastor, rabbi,
 trustee, council member or other elected or appointed
 individual responsible for the governance of the entity.

40 2. Immunity. When a person donates drugs and medical
42 supplies in good faith to a nonprofit organization for
44 distribution to needy individuals, the donor is not subject to
 civil or criminal liability. The scope of this immunity is
 subject to subsections 3 and 4.

46 3. Liability for damages from donated drugs or medical
48 supplies. A donor is not subject to any civil or criminal
50 liability arising from the nature, age, packaging or condition of
 drugs or medical supplies that the person donates in good faith
 to a nonprofit organization for ultimate distribution to needy

2 individuals, except that a donor may be subject to criminal and
3 civil liability if a donee is injured or dies due to an act or
4 omission of the donor constituting gross negligence or
5 intentional misconduct.

6 4. Partial compliance. If a donated drug or medical supply
7 does not meet quality and labeling standards imposed by federal,
8 state and local laws and regulations, the person who donates the
9 drug or medical supply is not subject to civil or criminal
10 liability when the following requirements are satisfied:

12 A. The donor notifies the nonprofit organization of the
13 defective condition of the donated drug or medical supply;

14 B. The nonprofit organization agrees to take the necessary
15 measures to comply with all relevant quality standards
16 imposed by federal, state and local laws and regulations
17 before distribution of the donated drug or medical supply;
18 and

19 C. The donor informs the nonprofit organization of the
20 quality standards applicable to the donated drug or medical
21 supply under federal, state and local laws and regulations.
22

24 STATEMENT OF FACT

26
27 This bill provides immunity from criminal and civil
28 liability to a person who in good faith donates drugs or medical
29 supplies to a nonprofit organization for distribution to needy
30 individuals. A donor who is guilty of gross negligence or
31 intentional misconduct is not immune from criminal and civil
32 liability.