

MAINE STATE LEGISLATURE

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R.d.s.

L.D. 1811

DATE: March 29, 1996

(Filing No. S-541)

JUDICIARY

Reported by: Senator MILLS of Somerset for the Committee.

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STATE OF MAINE SENATE 117TH LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A " to S.P. 711, L.D. 1811, Bill, "An Act to Correct Errors and Inconsistencies in the Laws of Maine"

Amend the bill by inserting after the enacting clause the following:

'PART A'

Further amend the bill by striking out all of sections 19, 22, 25, 27, 39, 40, 45, 53 and 65.

Further amend the bill by inserting at the end before the emergency clause the following:

'PART B'

Sec. B-1. 7 MRSA §3923-C, sub-§2, as amended by PL 1995, c. 409, §7 and repealed by c. 490, §8, is repealed.

Sec. B-2. 7 MRSA §3923-C, sub-§2-A, as enacted by PL 1995, c. 490, §9, is amended to read:

2-A. License fees. A kennel owner shall pay a fee of \$21 to the municipal clerk for each license to keep dogs or wolf hybrids. A license is needed only for dogs or wolf hybrids 6 months of age or older. A kennel owner may not keep more than 10 dogs or wolf hybrids per license. The clerk shall retain \$1 as a recording fee and forward \$5 to the municipality's animal welfare account established pursuant to section 3945 and \$15 to the Animal Welfare Fund.

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2 OPTIONAL: If the physician I have designated above is not
4 willing, able or reasonably available to act as my primary
 physician, I designate the following physician as my primary
 physician:

6 (name of physician)

8
 (address) (city) (state) (zip code)
10
12 (phone)

14 * * * * *

16 (12) EFFECT OF COPY: A copy of this form has the
 same effect as the original.
18 (13) SIGNATURES: Sign and date the form here:
20
 (date) (sign your name)
22
24 (address) (print your name)
26
 (city) (state)
28

 {Optional} SIGNATURES OF WITNESSES:
30 First witness Second witness
32
 (print name) (print name)
34
36 (address) (address)
38
 (city) (state) (city) (state)
40
42 (signature of witness) (signature of witness)
44
 (date) (date)
46

48 **Sec. B-5. 21-A MRSA §1020-A, sub-§3, as enacted by PL 1995, c.**
 483, §15, is amended to read:

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3. **Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of letters lateness required by paragraph--D subsection 6 and shall notify the commission of any late reports subject to a penalty.

Sec. B-6. 24 MRSA §2325-A, sub-§5-C, ¶B, as amended by PL 1995, c. 332, Pt. G, §1 and repealed and replaced by c. 407, §1, is repealed and the following enacted in its place:

B. All policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State on or after July 1, 1996 must provide benefits that meet the requirements of this paragraph. For purposes of this paragraph, all contracts are deemed renewed no later than the next yearly anniversary of the contract date.

(1) The contracts must provide benefits for the treatment and diagnosis of mental illnesses under terms and conditions that are no less extensive than the benefits provided for medical treatment for physical illnesses.

(2) At the request of a nonprofit hospital or medical service organization, a provider of medical treatment for mental illness shall furnish data substantiating that initial or continued treatment is medically necessary and appropriate. When making the determination of whether treatment is medically necessary and appropriate, the provider shall use the same criteria for medical treatment for mental illness as for medical treatment for physical illness under the group contract.

Sec. B-7. Effective date. That section of this Part that repeals and replaces the Maine Revised Statutes, Title 24, section 2325-A, subsection 5-C, paragraph B takes effect July 1, 1996.

Sec. B-8. 24-A MRSA §2843, sub-§5-C, ¶B, as amended by PL 1995, c. 332, Pt. G, §2 and repealed and replaced by c. 407, §6, is repealed and the following enacted in its place:

B. All policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State on or after July 1, 1996 must provide benefits that meet the requirements of this paragraph. For purposes of

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this paragraph, all contracts are deemed renewed no later than the next yearly anniversary of the contract date.

(1) The contracts must provide benefits for the treatment and diagnosis of mental illnesses under terms and conditions that are no less extensive than the benefits provided for medical treatment for physical illnesses.

(2) At the request of a nonprofit hospital or medical service organization, a provider of medical treatment for mental illness shall furnish data substantiating that initial or continued treatment is medically necessary and appropriate. When making the determination of whether treatment is medically necessary and appropriate, the provider shall use the same criteria for medical treatment for mental illness as for medical treatment for physical illness under the group contract.

Sec. B-9. Effective date. That section of this Part that repeals and replaces the Maine Revised Statutes, Title 24-A, section 2843, subsection 5-C, paragraph B takes effect July 1, 1996.

Sec. B-10. 24-A MRSA §2849-B, sub-§1, as amended by PL 1995, c. 332, Pt. F, §4 and c. 342, §6, is repealed and the following enacted in its place:

1. Policies subject to this section. This section applies to all individual, group medical and blanket insurance policies except hospital indemnity, specified accident, specified disease, long-term care and short-term policies issued by insurers or health maintenance organizations. For purposes of this section, a short-term policy is an individual, nonrenewable policy issued for a term that does not exceed 12 months.

Sec. B-11. 30-A MRSA §371, as repealed by PL 1995, c. 156, §1 and amended by c. 245, §6, is repealed.

Sec. B-12. 30-A MRSA §371-A, sub-§4 is enacted to read:

4. Vacancies. Vacancies must be filled as provided in the Constitution of Maine. In the case of a vacancy in the term of a sheriff who was nominated by primary election before the general election, the sheriff appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the sheriff whose term is vacant. In making the appointment, the Governor shall choose from any

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recommendations submitted to the Governor by the county committee of the political party from which the appointment is to be made.

Sec. B-13. 32 MRSA §2102, sub-§2, ¶D, as amended by PL 1993, c. 600, Pt. A, §110, is further amended to read:

D. Delegation of selected nursing services to assistants to nurses who have completed or are currently enrolled in a course sponsored by a state-approved facility or a facility licensed by the Department of Professional--and--Financial Regulation Human Services. This course must include a curriculum approved by the board. The board shall issue such rules concerning delegation as it considers necessary to ensure quality of health care to the patient;

Sec. B-14. 32 MRSA §6214-A, sub-§2-A, as enacted by PL 1995, c. 394, §15, is amended to read:

2-A. Registered alcohol and drug counselor. The board may issue a certificate of registration as a registered alcohol and drug counselor, upon the affirmative vote of 5 members of the board, to any applicant who has met the following minimal requirements:

A. Met the eligibility requirements set forth in section 6213;

B. Obtained a passing grade on the written exam and a provisionally passing grade on the oral exam, as established by the board and prescribed by its rules; and

C. Met any other criteria the board may prescribe by its rules.

This subsection is repealed October 1, 1996.

Sec. B-15. 36 MRSA §1760, sub-§47, as amended by PL 1995, c. 420, §1 and c. 478, §1 and affected by §2, is repealed and the following enacted in its place:

47. Emergency shelters, feeding organizations and emergency food supply programs. Sales of household and sanitary supplies and food items otherwise subject to tax to incorporated nonprofit organizations that provide free temporary emergency shelter or food for underprivileged individuals in this State. This subsection is repealed October 1, 1996;

Sec. B-16. 36 MRSA §1760, sub-§47-A is enacted to read:

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47-A. Emergency shelter and feeding organizations.
Beginning October 1, 1996, sales to incorporated nonprofit organizations that provide free temporary emergency shelter or food for underprivileged individuals in this State;

Sec. B-17. 38 MRSA §435, first ¶, as amended by PL 1993, c. 196, §1, is further amended to read:

To aid in the fulfillment of the State's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls. Shoreland areas include those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal wetland, within 250 feet of the upland edge of a freshwater wetland except as otherwise provided in section 439-A 438-A, subsection 2, or within 75 feet of the high-water line of a stream. The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

Sec. B-18. PL 1995, c. 173, §2 is repealed.

Sec. B-19. Retroactivity. That section of this Part that repeals Public Law 1995, chapter 173, section 2 applies retroactively to June 29, 1995.

PART C

Sec. C-1. 22 MRSA §3760-D, as repealed by PL 1995, c. 368, Pt. I, §1, is reenacted to read:

§3760-D. Special needs payment for recipients with excessive shelter costs

1. Amount of payment. The department shall provide a special housing allowance in the amount of \$75 per month for each assistance unit to recipients of Aid to Families with Dependent Children whose shelter expenses for rent, mortgage or similar payments, property insurance and property taxes equal or exceed

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75% of their monthly assistance unit income. Effective July 1, 1994 the special housing allowance is limited to \$50 per month for each assistance unit. For purposes of this subsection "monthly assistance unit income" means the total of the unit's Aid to Families with Dependent Children monthly benefit, plus income countable under Aid to Families with Dependent Children program rules, plus child support received by the unit, excluding the so-called \$50 pass-through payment.

3-A. Federal approval. In the event that federal approval for the Aid to Families with Dependent Children housing special needs payment described in this section is not given, the department is directed to negotiate with the appropriate federal agency to seek such approval. Notwithstanding any provision in this section, the department may implement a different method or standard for determining the housing special need for the purposes of obtaining federal approval, so long as the target population described in subsection 1 receives substantially the same benefit. The department is directed to consult with advocates for recipients of Aid to Families with Dependent Children during any negotiations with a federal agency for approval of the housing special needs payment.

Sec. C-2. Retroactivity. That section of this Part that reenacts Title 22, section 3760-D is effective retroactively to June 29, 1995.

Sec. C-3. 24 MRSA §2904, as amended by PL 1995, c. 239, §1 and c. 385, §1, is repealed and the following enacted in its place:

§2904. Immunity from civil liability for volunteer activities

1. Health care practitioners. Notwithstanding any inconsistent provision of any public or private and special law, a licensed health care practitioner who voluntarily, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides professional services within the scope of that health care practitioner's licensure to a nonprofit organization or to an agency of the State or any political subdivision of the State or to members or recipients of services of that organization or state or local agency is not liable for an injury or death arising from those services unless the injury or death was caused willfully, wantonly, recklessly or by gross negligence of the health care practitioner.

2. Retired physicians, podiatrists and dentists. Notwithstanding any inconsistent provision of any public or private and special law, a licensed physician, podiatrist or dentist who has retired from practice and who voluntarily,

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without the expectation or receipt of monetary or other compensation either directly or indirectly, provides professional services within the scope of that physician's, podiatrist's or dentist's licensure to a nonprofit organization or to an agency of the State or any political subdivision of the State or to members or recipients of services of that organization or state or local agency is not liable for an injury or death arising from those services unless the injury or death was caused willfully, wantonly or recklessly by the physician, podiatrist or dentist. This extended immunity applies only if the licensed physician, podiatrist or dentist retired from practice, possessed an unrestricted license in the relevant profession and had not been disciplined by the licensing board in the previous 5 years at the time of the act or omission causing the injury.

3. Terms. For the purpose of this section, the term:

A. "Dentist" means a person who practices dentistry according to the provisions of Title 32, section 1081;

B. "Health care practitioner" has the same meaning as provided in section 2502;

C. "Nonprofit organization" does not include a hospital; and

D. "Podiatrist" has the same meaning as provided in Title 32, section 3551.

Sec. C-4. 29-A MRSA §403, as amended by PL 1995, c. 6, §1 and repealed by c. 49, §1 and c. 50, §1, is repealed.

Sec. C-5. PL 1993, c. 732, Pt. A, §8 is amended to read:

Sec. A-8. 38 MRSA §1303-C, sub-§39, as amended by PL 1993, c. 424, §2 and affected by §3, is further amended to read:

39. Treatment. "Treatment" means any process, including but not limited to incineration, designed to change the character or composition of any hazardous waste, waste oil or biomedical waste so as to render the waste less hazardous or infectious. ~~"Treatment" also means any process including but not limited to~~

~~incineration designed to change the character of composition of
any waste oil, as defined in rules adopted under section 1319-O,
subsection 2, or biomedical waste so as to render the waste less
hazardous.~~

Sec. C-6. PL 1995, c. 7, §2 is repealed.

Sec. C-7. **Retroactivity.** That section of this Part that
repeals Public Law 1995, chapter 7, section 2 is effective
retroactively to June 29, 1995.

STATEMENT OF FACT

This amendment deletes from the bill sections 22, 39, 40 and
53. These sections propose to correct errors that are corrected
in other bills. Sections 19, 25 and 45 are deleted from the bill
but included in this amendment in Part B with amendments.
Section 27 is deleted from the bill but included in this
amendment in Part C with amendments. Section 65 is deleted from
the bill but included in this amendment in Part C. The remaining
sections in the bill are labelled Part A.

PART B

Sections 1 and 2 correct a conflict created by Public Law
1995, chapters 409 and 490, which amended the same section of
law. Chapter 490 repealed the Maine Revised Statutes, Title 7,
section 3923-C, subsection 2 and enacted a subsection 2-A.
Chapter 409 amended subsection 2 by adding wolf hybrids to the
types of animals for which a person needs to obtain a license if
the animals are being kept by that person. These sections
correct the conflict by repealing subsection 2 and incorporating
the changes made by chapter 409 into the newly enacted subsection
2-A.

Section 3 was printed as section 19 in the bill. It is
included in Part B to delete an erroneous cross-reference
contained in the printed bill.

Section 4 corrects an internal conflict in the Uniform
Health-care Decisions Act. The substantive provisions require
that 2 witnesses sign an advance health care directive, but the
optional form, based on the uniform act, retained the designation
"optional" for the witnesses' signatures. This section deletes
that designation.

Section 5 was printed as section 25 of the bill. Last year,
the section of the election laws covering campaign finance
reports and the consequences of failing to file reports on time

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2 was repealed and replaced. Language governing the role of the
municipal clerk in municipal elections was not correctly
reenacted. "Notice of lateness" became "notice of letters."
4 Section 25 corrected a cross-reference error. This section makes
that correction and reinstates the "notice of lateness" language.

6
8 Section 6 corrects a conflict created by Public Law 1995,
chapters 332 and 407, which affected the same provision of law.
Section 6 corrects the conflict by repealing both versions and
10 replacing paragraph B using the language from chapter 407 only.
Section 7 makes that change effective July 1, 1996, consistent
12 with the Legislature's original intent.

14 Section 8 corrects a conflict created by Public Law 1995,
chapters 332 and 407, which affected the same section of law.
16 Section 8 corrects the conflict by repealing both versions and
replacing paragraph B using the language from chapter 407 only.
18 Section 9 makes that change effective July 1, 1996, consistent
with the Legislature's original intent.

20
22 Section 10 corrects a conflict created by Public Law 1995,
chapters 332 and 342, which amended the same section of law.
Chapter 332 amended the subsection by making the section
24 applicable to blanket insurance policies and inapplicable to
Medicare supplement policies. Chapter 342 amended the subsection
26 by making it applicable to short-term policies and defining a
short-term policy. This section corrects the conflict by
28 incorporating changes made by both laws.

30 Sections 11 and 12 correct a conflict created by Public Law
1995, chapters 156 and 245, which affected the same section of
32 law. Chapter 156 repealed section 371 and enacted a new section
371-A. Chapter 245 amended section 371 by adding language that
34 deals with filling vacancies. These sections correct the
conflict by repealing section 371 and incorporating the changes
36 made by chapter 245 into section 371-A.

38 Section 13 amends the definition of the practice of
"professional nursing," which referred to state-approved
40 facilities or facilities licensed by the Department of
Professional and Financial Regulation. Although the department
42 regulates the nursing profession from a licensing perspective, it
does not license facilities. Those facilities are actually
44 licensed by the Department of Human Services. This section
changes the reference to the Department of Human Services.

46
48 Section 14 was printed as section 45 of the bill. The
repeal date printed in the bill was 1966. This sections corrects
it to 1996.

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2 Sections 15 and 16 correct a conflict created by Public Law
4 1995, chapters 420 and 478, which affected the same provision of
6 law. Chapter 420 added the exemption of sales of food items to
8 emergency shelters, feeding organizations and emergency food
supply programs from the sales tax. Chapter 478 exempted all
sales to emergency shelters and feeding organizations from the
sales tax, effective October 1, 1996. These sections incorporate
the changes made by both laws.

10 Sections 17 corrects a cross-reference. The cross-reference
12 should refer to the provision allowing a municipality to have a
14 75-foot shoreland zone around freshwater wetlands in certain
16 cases. Although section 439-A is not entirely irrelevant to this
section, the changes in 439-A apply to all shoreland zone areas,
not just the freshwater wetlands areas. This section corrects
the error by replacing the cross-reference.

18 Sections 18 and 19 correct a conflict created by Public Law
20 1995, chapters 173 and 368, which affected the same section of
law, by repealing Public Law 1995, chapter 173, section 2.

22 PART C

24 Part C contains sections that may be considered substantive
26 rather than technical.

28 Sections 1 and 2 correct a problem created when Public Law
30 1995, chapter 368 repealed the Maine Revised Statutes, Title 22,
32 section 3760-D and Public Law 1995, chapter 395 attempted to keep
34 Title 22, section 3760-D in law by repealing the section of
chapter 368 that repealed Title 22, section 3760-D. Repealing a
repealer does not revive the statute that was initially
repealed. These 2 sections reenact Title 22, section 3760-D and
make that reenactment retroactive to June 29, 1995, the effective
date of Public Law 1995, chapter 368. This correction is not
intended to have any fiscal impact, and the appropriation and
allocation in Public Law 1995, chapter 395 govern.

38 A version of section 3 was printed as section 27 in the
40 bill. This amendment clarifies that the extended immunity
42 enacted last year applies only to retired dentists, podiatrists
and physicians, not retired health care professionals in
general. The language is revised to provide clarity and ensure
44 that the person who provided the professional services was
retired at the time the services that are the subject of
46 controversy were provided.

48 Section 4 corrects a conflict created by Public Law 1995,
chapter 6, which changed the date of compliance for the motor
50 vehicle emission inspection program, and Public Law 1995,

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2 chapters 49 and 50, which repealed the inspection requirement.
This section corrects the conflict by repealing Title 29-A,
section 403.

4
6 Section 5 corrects a clerical error that occurred when the
Maine Revised Statutes, Title 38, section 1303-C, subsection 39
was amended and the last sentence of that subsection was omitted
8 rather than shown stricken.

10 Section 6 was printed as section 65 in the bill. It
corrects a conflict created when 2 chapters of public law amended
12 differently the reporting date of the Commission on Governmental
Ethics and Election Practices. This section repeals the earlier
14 amendment.