

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)



121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1897

H.P. 1404

House of Representatives, March 1, 2004

An Act To Make Emergency Changes to Recent Law

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative NORBERT of Portland.
Cosponsored by Senator PENDLETON of Cumberland.

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

4 Whereas, there are certain errors and inconsistencies in
6 Public Law 2003, chapter 510 that need immediate correction; and

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

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

16 **Sec. 1. 5 MRSA §191, sub-§4, ¶A,** as enacted by PL 2003, c.
510, Pt. B, §2 and affected by §3, is repealed.

18 **Sec. 2. Retroactivity.** That section of this Act that repeals
20 the Maine Revised Statutes, Title 5, section 191, subsection 4,
paragraph A applies retroactively to July 1, 2003.

22 **Sec. 3. 22 MRSA §253, sub-§3,** as repealed by PL 2003, c. 469,
24 Pt. B, §3 and amended by c. 510, Pt. A, §14, is repealed.

26 **Sec. 4. 22 MRSA §1812-G, sub-§7,** as enacted by PL 2003, c.
376, §2, is amended to read:

28 **7. Time limit on consideration of prior criminal**
30 **conviction.** Except as otherwise provided in this section, an
individual may not be employed in a hospital, nursing facility,
32 home health agency or assisted housing program as a certified
nursing assistant if that individual has a prior criminal
34 conviction within the last 10 years of:

36 A. A crime for which incarceration of 3 years or more may
be imposed under the laws of the state in which the
38 conviction occurred; or

40 B. A crime for which incarceration of less than 3 years may
be imposed under the laws of the state in which the
42 conviction occurred involving sexual misconduct or involving
abuse, neglect or exploitation in a setting other than a
44 health care setting.

46 **Sec. 5. Retroactivity.** That section of this Act that amends
the Maine Revised Statutes, Title 22, section 1812-G, subsection
48 7 applies retroactively to June 2, 2003.

2 **Sec. 6. 22 MRSA §2061, sub-§2**, as amended by PL 2003, c. 469,
Pt. C, §16 and c. 510, Pt. A, §16, is repealed and the following
enacted in its place:

4
6 **2. Review.** Each project for a health care facility has
been reviewed and approved to the extent required by the agency
of the State that serves as the designated planning agency of the
State or by the Department of Human Services in accordance with
the provisions of the Maine Certificate of Need Act of 2002, as
amended, and is consistent with the cost containment provisions
for health care and health coverage of the State Health Plan
adopted pursuant to Title 2, section 101, paragraph A;

14 **Sec. 7. 22 MRSA §3477, sub-§1, ¶A**, as repealed and replaced by
PL 2003, c. 510, Pt. E, §2 and affected by §4, is amended to read:

16 A. While acting in a professional capacity:

- 18 (1) An allopathic or osteopathic physician;
20 (2) A medical intern;
22 (3) A medical examiner;
24 (4) A physician's assistant;
26 (5) A dentist;
28 (6) A chiropractor;
30 (7) A podiatrist;
32 (8) A registered or licensed practical nurse;
34 (9) A certified nursing assistant;
36 (10) A social worker;
38 (11) A psychologist;
40 (12) A pharmacist;
42 (13) A physical therapist;
44 (14) A speech therapist;
46 (15) An occupational therapist;
48 (16) A mental health professional;

- 2 (17) A law enforcement official;
- 4 (18) A coroner;
- 6 (19) Emergency room personnel;
- 8 (20) An ambulance attendant;
- 10 (21) An emergency medical technician;
- 12 (22) Unlicensed assistive personnel;
- 14 (23) A ~~human~~ humane agent employed by the Department
of Agriculture, Food and Rural Resources; and
- 16
- 18 (24) A clergy member acquiring the information as a
result of clerical professional work except for
information received during confidential communications;
- 20

22 **Sec. 8. 22 MRSA §4011-A, sub-§1, ¶A**, as repealed and replaced
by PL 2003, c. 510, Pt. E, §3 and affected by §4, is repealed and
the following enacted in its place:

24 A. When acting in a professional capacity:

- 26
- 28 (1) An allopathic or osteopathic physician, resident or
intern;
- 30 (2) An emergency medical services person;
- 32 (3) A medical examiner;
- 34 (4) A physician's assistant;
- 36 (5) A dentist;
- 38 (6) A dental hygienist;
- 40 (7) A dental assistant;
- 42 (8) A chiropractor;
- 44 (9) A podiatrist;
- 46 (10) A registered or licensed practical nurse;
- 48 (11) A teacher;
- 50 (12) A guidance counselor;

- 2 (13) A school official;
- 4 (14) A children's summer camp administrator or
counselor;
- 6 (15) A social worker;
- 8 (16) A court-appointed special advocate or guardian ad
10 litem for the child;
- 12 (17) A homemaker;
- 14 (18) A home health aide;
- 16 (19) A medical or social service worker;
- 18 (20) A psychologist;
- 20 (21) Child care personnel;
- 22 (22) A mental health professional;
- 24 (23) A law enforcement official;
- 26 (24) A state or municipal fire inspector;
- 28 (25) A municipal code enforcement official;
- 30 (26) A commercial film and photographic print
32 processor;
- 34 (27) A clergy member acquiring the information as a
result of clerical professional work except for
36 information received during confidential communications;
- 38 (28) A chair of a professional licensing board that
has jurisdiction over mandated reporters; and
- 40 (29) A humane agent employed by the Department of
42 Agriculture, Food and Rural Resources;

44 **Sec. 9. Retroactivity.** That section of this Act that amends
46 the Maine Revised Statutes, Title 22, section 3477, subsection 1,
48 paragraph A and that section that repeals and replaces Title 22,
section 4011-A, subsection 1, paragraph A apply retroactively to
September 13, 2003.

2 **Sec. 10. 22 MRSA §8103, sub-§1**, as repealed by PL 2003, c.
411, §1 and repealed and replaced by c. 510, Pt. A, §18, is
repealed.

4 **Sec. 11. PL 2003, c. 510, Pt. B, §3** is amended to read:

6 **Sec. B-3. Retroactivity.** That section of this Part that
8 repeals and replaces the Maine Revised Statutes, Title 5, section
191 ~~takes-effect~~ applies retroactively to July 1, 2003.

10 **Sec. 12. PL 2003, c. 510, Pt. C, §10** is repealed.

12 **Sec. 13. Retroactivity.** That section of this Act that repeals
14 Public Law 2003, chapter 510, Part C, section 10 applies
retroactively to January 11, 2004.

16 **Sec. 14. PL 2003, c. 510, Pt. E, §4** is amended to read:

18 **Sec. E-4. Retroactivity.** Those sections of this Part that
20 repeal and replace the Maine Revised Statutes, Title 22, section
3477, subsection 1, paragraph A and section 4011-A, subsection 1,
22 paragraph A ~~take-effect-90-days-after-adjourment-of-the-First~~
~~Regular-Session-of-the-121st-Legislature~~ apply retroactively to
24 September 13, 2003.

26 **Sec. 15. PL 2003, c. 510, Pt. F, §2** is amended to read:

28 **Sec. F-2. Retroactivity.** That section of this Part that amends
the Maine Revised Statutes, Title 21-A, section 1014, subsection
30 2 ~~takes-effect-90-days-after-adjourment-of-the-First-Regular~~
~~Session--of--the--121st--Legislature~~ applies retroactively to
32 September 13, 2003.

34 **Sec. 16. PL 2003, c. 510, Pt. G, §3** is enacted to read:

36 **Sec. G-3. Retroactivity.** Those sections of this Part that
38 enact the Maine Revised Statutes, Title 22, section 7855,
subsection 4, paragraph A-2 and amend Title 22, section 7855,
subsection 4, paragraph B apply retroactively to June 3, 2003.

40 **Emergency clause.** In view of the emergency cited in the
42 preamble, this Act takes effect when approved.

44
46
SUMMARY

48 This bill amends the Maine Revised Statutes, Title 5,
section 191, subsection 4 to delete obsolete language.
Corporations are not required to file a certificate of
50 organization with the Attorney General under the Maine Revised

2 Statutes, Title 9-B. This bill applies this change retroactively
to July 1, 2003.

4 This bill corrects a conflict created by Public Law 2003,
6 chapters 469 and 510, which both affected the Maine Revised
Statutes, Title 22, section 253, subsection 3, by repealing the
provision.

8 This bill corrects the law concerning certified nursing
10 assistants. Public Law 2003, chapter 376 amended the Maine
Revised Statutes, Title 22, section 1812-G, subsection 7, which
12 governs certified nursing assistants, or "CNAs." The new law
includes provisions prohibiting the employment of a CNA in
14 certain situations if the CNA was convicted within the last 10
years of certain crimes. Chapter 376 lists those situations as
16 hospitals, home health agencies and assisted housing programs.
Nursing facilities were inadvertently omitted from the list.
18 This bill amends the law to include nursing facilities and makes
that change retroactive to June 2, 2003, the date on which
20 chapter 376 took effect.

22 This bill corrects a conflict created by Public Law 2003,
24 chapters 469 and 510, which both affected the Maine Revised
Statutes, Title 22, section 2061, subsection 2, by repealing this
provision and replacing it with the chapter 469 version.

26 This bill amends the Maine Revised Statutes, Title 22,
28 section 3477, subsection 1, paragraph A and repeals and replaces
Title 22, section 4011-A, subsection 1, paragraph A to correct
30 the spelling of "humane agent" and to correct an error in
formatting.

32 This bill corrects a conflict created by Public Law 2003,
34 chapters 411 and 510, which both affected the Maine Revised
Statutes, Title 22, section 8103, subsection 1, by repealing that
36 subsection.

38 This bill applies the section of Public Law 2003, chapter
510 that repeals and replaces the Maine Revised Statutes, Title
40 5, section 191 retroactively to July 1, 2003.

42 This bill repeals Public Law 2003, chapter 510, Part C,
44 section 10 retroactively to January 11, 2004.

46 This bill applies the sections of Public Law 2003, chapter
510 that repeal and replace the Maine Revised Statutes, Title 22,
48 section 3477, subsection 1, paragraph A and section 4011-A,
subsection 1, paragraph A retroactively to September 13, 2003.

2 This bill applies the section of Public Law 2003, chapter
510 that amends the Maine Revised Statutes, Title 21-A, section
1014, subsection 2 retroactively to September 13, 2003.

4

6 This bill applies the sections of Public Law 2003, chapter
510 that enact the Maine Revised Statutes, Title 22, section
7855, subsection 4, paragraph A-2 and amend Title 22, section
8 7855, subsection 4, paragraph B retroactively to June 3, 2003.