

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

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No. 1108

H.P. 761

House of Representatives, March 1, 2005

An Act To Protect Maine Foster and Adoptive Parents

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative VAUGHAN of Durham.

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 5 MRSA §1728-A, sub-§1**, as amended by PL 1993, c. 470,
5 §1, is further amended by amending the first paragraph to read:

6 **1. Duties.** The director shall provide insurance advice and
7 services for all forms of insurance for State Government and any
8 department or agency of State Government except for those
9 departments or agencies and those types of insurance otherwise
10 provided for by law through the self-insurance fund and to other
11 entities designated as entitled to advice and services through
12 the state-administered fund pursuant to section 1737. The
13 director shall provide insurance services for foster parents and
14 adoptive parents pursuant to section 1738. The director is
15 responsible for the acquisition and administration of all
16 insurance purchased by the State, including the authority to
17 purchase insurance for the State for automobile, fire, liability
18 and any other type of coverage necessary to protect the State
19 from financial loss. The director may enter into contracts for
20 various types of claims management services in order to ensure
21 the most economically advantageous insurance protection in the
22 operation of the State's insurance coverage program. In these
23 regards, the director has the following duties:

24 **Sec. 2. 5 MRSA §1738** is enacted to read:

25 **§1738. Foster and adoptive parent liability insurance**

26
27 The director shall acquire and administer a liability
28 insurance policy for foster parents and for adoptive parents who
29 receive state adoption assistance pursuant to Title 18-A, section
30 9-401. For the purposes of this section, "foster parent" means a
31 person maintaining a family foster home, as defined in Title 22,
32 section 8101, subsection 3, or a person maintaining a specialized
33 children's home, as defined in Title 22, section 8101, subsection
34 5. The liability insurance policy must include, but is not
35 limited to, coverage for personal injury and for defense against
36 claims that arise directly out of the insured's activities as a
37 foster parent or adoptive parent. The insurance premium for this
38 policy must be deducted annually from the foster parent's
39 reimbursement for foster care and from the adoptive parent's
40 adoption assistance payment.

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43 **Sec. 3. 18-A MRSA §9-315, sub-§(d)** is enacted to read:

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45 (d) Notwithstanding section 9-105, an adoptive parent may
46 not be required to pay child support for an adopted child if the
47 Probate Court has annulled the decree of adoption for that child.
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2 **Sec. 4. 18-A MRSA §9-405** is enacted to read:

4 **§9-405. Liability insurance**

6 Adoptive parents who receive assistance under the program shall have liability insurance pursuant to Title 5, section 1738.

8 **Sec. 5. 22 MRSA §8101, sub-§3,** as amended by PL 1999, c. 392, §4 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

10 **3. Family foster home.** "Family foster home" means a
12 children's home, other than an Indian foster family home, that is
14 a private dwelling where substitute parental care is provided
16 within a family on a regular, 24-hour a day, residential basis.
18 The total number of children in care may not exceed 6, including
20 the family's legal children under 16 years of age, with no more
22 than 2 of these children under the age of 2. ~~Family-foster-homes
24 licensed-by-the-Department-of-Health-and-Human-Services-or
26 relatives'-homes-approved-by-the-Department-of-Health-and-Human
28 Services--as-meeting--licensing--standards--are--eligible--for
30 insurance-pursuant-to-Title-5,-section-1728-A.-In-any-action-for
32 damages-against-a-family-foster-home-provider-insured-pursuant-to
34 Title-5,-section-1728-A,-for-damages-covered-under-that-policy,
36 the-claim-for-and-award-of-these-damages,-including-costs-and
interest,-may-not-exceed-\$300,000-for-any-and-all-claims-arising
out-of-a-single-occurrence.--When-the-amount-awarded-to-or
settled-for-multiple-claimants-exceeds-the-limit-imposed-by-this
section,-any-party-may-apply-to-the-Superior-Court-for-the-county
in-which-the-governmental-entity-is-located-to-allocate-to-each
claimant-that-claimant's-equitable-share-of-the-total,-limited-as
required-by-this-section.--Any-award-by-the-court-in-excess-of
the-maximum-liability-limit-must-be-automatically-abated-by
operation-of-this-section-to-the-maximum-limit-of-liability.
Nothing-in-this-subsection-may-be-deemed-to-make-the-operation-of
a-family-foster-home-a-state-activity-nor-may-it-expand-in-any
way-the-liability-of-the-State-or-foster-parent.~~

38 **Sec. 6. 22 MRSA §8108** is enacted to read:

40 **§8108. Liability insurance**

42 **1. Family foster homes.** Family foster homes licensed by
44 the Department of Health and Human Services or relatives' homes
46 approved by the Department of Health and Human Services as
48 meeting licensing standards are eligible for insurance pursuant
to Title 5, section 1728-A. In any action for damages against a
family foster home provider insured pursuant to Title 5, section
1728-A, for damages covered under that policy, the claim for and
award of those damages, including costs and interest, may not

2 exceed \$300,000 for any and all claims arising out of a single
3 occurrence. When the amount awarded to or settled for multiple
4 claimants exceeds the limit imposed by this section, any party
5 may apply to the Superior Court for the county in which the
6 governmental entity is located to allocate to each claimant that
7 claimant's equitable share of the total, limited as required by
8 this section. Any award by the court in excess of the maximum
9 liability limit must be automatically abated by operation of this
10 section to the maximum limit of liability. Nothing in this
11 subsection may be deemed to make the operation of a family foster
12 home a state activity nor may it expand in any way the liability
13 of the State or foster parent. A person who maintains a family
14 foster home shall have liability insurance pursuant to Title 5,
15 section 1738.

16 2. Specialized children's homes. A person who maintains a
17 specialized children's home shall have liability insurance
18 pursuant to Title 5, section 1738.

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SUMMARY

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25 This bill requires the State to administer a liability
26 insurance policy for certain foster and adoptive parents. The
27 requirement applies to foster parents who maintain family foster
28 homes and to foster parents who maintain specialized children's
29 homes for children with special needs, and it applies to adoptive
30 parents who receive state adoption assistance for children with
31 special needs. The required liability insurance must include
32 coverage for personal injury and for legal defense against claims
33 made against the foster or adoptive parent. The bill specifies
34 that the cost of the insurance premium must be paid annually by
35 the foster parent through a deduction from the foster care
36 reimbursement payment and must be paid annually by the adoptive
37 parent through a deduction from the adoption assistance payment.
38 The bill also prohibits the State from requiring any adoptive
parent to pay child support after an adoption is annulled by the
court.