

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 453-End

AND AT THE

FIRST SPECIAL SESSION
September 6, 1983 to September 7, 1983
Chapters 583-588

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J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

to be drained or otherwise alter ~~such~~ that coastal wetland.

Sec. 6. 38 MRSA §483, sub-§2, as enacted by PL 1981, c. 449, §7, is amended to read:

2. Application. Any person intending to construct or operate a development shall, before commencing construction or operation, notify the ~~board~~ department in writing of his intent and of the nature and location of the development, together with other information as the board may by regulation require. The board ~~or the commissioner~~ shall within 30 days of receipt of the notification, either approve the proposed development, upon such terms and conditions as are appropriate and reasonable or disapprove the proposed development setting forth the reasons therefor or schedule a hearing thereon in the manner hereinafter provided.

Any person as to whose development the board has issued an order without a hearing may request, in writing, within 30 days after notice of the board's decision, a hearing before the board. This request shall set forth, in detail, the findings and conclusions of the board to which ~~such~~ that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the board shall schedule and hold a hearing limited to the matters set forth in the request. Hearings shall be scheduled in accordance with section 484.

Sec. 7. 38 MRSA §625, first ¶, as enacted by PL 1979, c. 465, is amended to read:

The board shall, ~~within 30 days of receipt of a completed application~~, either approve the proposed small hydroelectric power project, upon such terms and conditions as are appropriate and reasonable, or disapprove the proposed small hydroelectric power project setting forth the reasons therefor, ~~or schedule a hearing thereon in the manner provided in this section.~~

Effective September 23, 1983.

CHAPTER 454

H.P. 1165 - L.D. 1546

AN ACT to Authorize Court Appointed
Receivers.

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

22 MRSA c. 1666-A is enacted to read:

CHAPTER 1666-A

APPOINTMENT OF RECEIVERS

§7931. Policy

It is the purpose of this chapter to develop a mechanism whereby the concept of receivership can be utilized for the protection of residents in long-term care facilities. It is the intent of the Legislature that receivership shall be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile.

§7932. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Emergency. "Emergency" means a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to residents, including, but not limited to, imminent or actual abandonment of an occupied facility.

2. Facility. "Facility" means any boarding care facility subject to licensure pursuant to chapters 1663 and 1665 and any skilled nursing or intermediate care facility or unit subject to licensure pursuant to chapter 405.

3. Habitual violation. "Habitual violation" means a violation of state or federal law which, due to its repetition, presents a reasonable likelihood of serious physical or mental harm to residents.

4. Licensee. "Licensee" means any person or any other legal entity, other than a receiver appointed under section 7933, who is licensed or required to be licensed to operate a facility.

5. Owner. "Owner" means the holder of the title to the real estate in which the facility is maintained.

6. Resident. "Resident" means any person who lives in and receives services or care in a long-term care facility.

7. Substantial violation. "Substantial viola-

tion" means a violation of state or federal law which presents a reasonable likelihood of serious physical or mental harm to residents.

8. Transfer trauma. "Transfer trauma" means the combination of medical and psychological reactions to abrupt physical transfer that may increase the risk of grave illness or death.

§7933. Appointment of receiver

1. Grounds for appointment. The following circumstances shall be grounds for the appointment of a receiver to operate a long-term care facility.

A. A facility intends to close but has not arranged at least 30 days prior to closure for the orderly transfer of its residents.

B. An emergency exists in a facility which threatens the health, security or welfare of residents.

C. A facility is in substantial or habitual violation of the standards of health, safety or resident care established under state or federal regulations to the detriment of the welfare of the residents.

This remedy is in addition to, and not in lieu of, the power of the department to revoke, suspend or refuse to renew a license under the Maine Administrative Procedure Act, Title 5, chapter 375.

2. Who may bring action. The commissioner or acting commissioner may bring an action in Superior Court requesting the appointment of a receiver.

3. Procedure for hearing. The procedure for a hearing shall be as follows.

A. The court shall hold a hearing not later than 10 days after the action is filed, unless all parties agree to a later date. Notice of the hearing shall be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee cannot be served, the court shall specify the alternative notice to be provided. The department shall post notice, in a form approved by the court, in a conspicuous place in the facility, for not less than 3 days before the hearing. After the hearing, the court may appoint a receiver if it finds that any one of the grounds for appointment set forth is satisfied.

B. A temporary receiver may be appointed with or

without notice to the owner or licensee if it appears by verified complaint or affidavit that an emergency exists in the facility which must be remedied immediately to insure the health, safety and welfare of the residents. The temporary appointment of a receiver without notice to the owner or licensee may be made only if the court is satisfied that the petitioner has made a diligent attempt to provide reasonable notice under the circumstances. Upon appointment of a temporary receiver, the department shall proceed forthwith to make service as provided in paragraph A, and a hearing shall be held within 10 days, unless all parties agree to a later date. If the department does not proceed with the petition, the court shall dissolve the temporary receivership. On 2 days' notice to the receiver, all parties and the department, or on such shorter notice as the court may prescribe, the owner or licensee may appear and move the dissolution or modification of an order appointing a receiver which has been entered without notice, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

4. Who may be appointed receiver. The court may appoint any person deemed appropriate by the court to act as receiver, except any state employee. The court may remove a receiver for good cause.

5. Compensation of receiver. The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with such surety as the court may require. Any expenditures shall be paid from the revenues of the facility.

§7934. Powers and duties of the receiver

1. Powers and duties. A receiver appointed pursuant to this chapter shall have such powers as the court may direct to operate the facility and to remedy the conditions which constituted grounds for the receivership, to protect the health, safety and welfare of the residents and to preserve the assets and property of the residents, the owner and the licensee. On notice and hearing, the court may issue a writ of possession in behalf of the receiver, for specified facility property.

The receiver shall make reasonable efforts to notify residents and family that the facility is placed in receivership. The owner and licensee shall be divested of possession and control of the facility during the period of receivership under such conditions as the court shall specify. With the court's approval, the receiver shall have specific authority

to:

A. Remedy violations of federal and state regulations governing the operation of the facility;

B. Hire, direct, manage and discharge any employees, including the administrator of the facility;

C. Receive and expend in a reasonable and prudent manner the revenues of the facility due during the 30-day period preceding the date of appointment and becoming due thereafter;

D. Continue the business of the home and the care of residents;

E. Correct or eliminate any deficiency of the facility which endangers the safety or health of the residents, provided that the total cost of the correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver; and

F. Exercise such additional powers and perform such additional duties, including regular accountings, as the court deems appropriate.

2. Revenues of the facility. Revenues of the facility shall be handled as follows.

A. The receiver shall apply the revenues of the facility to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to appointment where such debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility, or where payment of the debts will interfere with the purposes of the receivership. Priority shall be given by the receiver to expenditures for current direct resident care. Revenues held by or owing to the receiver in connection with the operation of the facility shall be exempt from attachment and trustee process, including process served prior to the institution of receivership proceedings.

B. The receiver may correct or eliminate any deficiency of the facility which endangers the safety or health of the resident, provided that the total costs of the correction does not exceed \$3,000. On application by the receiver, the court may order expenditures for this purpose in excess of \$3,000. The licensee or owner may apply

to the court to determine the reasonableness of any expenditure over \$3,000 by the receiver.

C. In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the residents, the receiver may petition the court for permission to borrow for these purposes. Notice of the receiver's petition to the court for permission to borrow shall be given to the owner, the licensee and the department. The court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the facility should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy or if it determines that the facility should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents for the limited period of time that they are awaiting transfer. The purpose of this provision is to protect residents and to prevent the closure of facilities which, under proper management, are likely to be viable operations. This section shall not be construed as a method of financing major repair or capital improvements to facilities which have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means.

3. Avoidance of preexisting leases, mortgages and contracts. A receiver may not be required to honor any lease, mortgage, secured transaction or other contract entered into by the owner or licensee of the facility if the court finds that:

A. The person seeking payment under the agreement has an ownership interest in the facility or was related to the licensee or the facility by any significant degree of common ownership or control at the time the agreement was made; or

B. The rental, price or rate of interest required to be paid under the agreement is in excess of a reasonable rental, price or rate of interest.

If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest which the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the facility, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the term of the receivership. The court shall hold a

hearing on the application within 15 days, and the receiver shall send notice of the application to any known owners and mortgagees of the property at least 10 days before the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for the possession of the subject goods or real estate by any person who received such notice.

Notwithstanding this subsection, there shall be no foreclosure or eviction during the receivership by any person where the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

4. Closing of the facility. The receiver may not close the facility without leave of the court. In ruling on the issue of closure, the court shall consider:

- A. The rights and best interests of the residents;
- B. The availability of suitable alternative placements;
- C. The rights, interest and obligations of the owner and licensee;
- D. The licensure status of the facility; and
- E. Any other factors which the court deems relevant.

When a facility is closed, the receiver shall provide for the orderly transfer of residents to mitigate transfer trauma.

§7935. Termination of receivership

The receivership shall terminate when the court certifies that the conditions which prompted the appointment have been corrected or, in the case of a discontinuance of operation, when the residents are safely relocated. The court shall review the necessity of the receivership at least semiannually.

A receivership shall not be terminated in favor of the former or the new licensee, unless such person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment deemed sufficient by the court.

§7936. Liability of receiver

No person may bring suit against a receiver

appointed under section 7933 without first securing leave of the court. Except in cases of gross negligence or intentional wrongdoing, the receiver is liable in his official capacity only and any judgment rendered shall be satisfied out of receivership assets.

§7937. Court order to have effect of license

An order appointing a receiver under section 7933 shall have the effect of a license for the duration of the receivership. The receiver shall be responsible to the court for the conduct of the facility during the receivership, and any violation of regulations governing the conduct of the facility, if not promptly corrected, shall be reported by the department to the court.

§7938. Rule-making authority to implement receivership law

The department may adopt regulations as necessary, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, to implement this chapter.

Effective September 23, 1983.

CHAPTER 455

H.P. 1272 - L.D. 1686

AN ACT to Amend Certain Motor Vehicle
Laws.

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

Whereas, these motor vehicle laws contain permit and registration options which are essential to the trucking industry; and

Whereas, these amendments to the motor vehicle laws expedite the affairs of Maine commerce and facilitate conduct of the state's business; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preser-