

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
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Chapters 583-588

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J.S. McCarthy Co., Inc.
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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

CHAPTER 470

S.P. 583 - L.D. 1691

AN ACT Concerning Confidential Records
and State Certification of Educational
Personnel.

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

Whereas, there is confusion regarding the manner in which professional certificates can be denied, revoked or suspended by actions of the Commissioner of Educational and Cultural Services; and

Whereas, the Legislature finds that one ground for the denial, revocation or suspension of a professional certificate is conduct involving child abuse which should be dealt with immediately; 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 preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 20 MRSA §807, sub-§4 is enacted to read:

4. Commissioner's review. The commissioner shall have access to any of the records or documents designated as confidential in this section in carrying out his duties pursuant to sections 1751 to 1754.

Sec. 2. 20 MRSA §1751, as amended by PL 1975, c. 551, §2, is further amended by adding at the end a new paragraph to read:

Evidence that an applicant for initial certification or renewal has injured the health or welfare of a child through physical or sexual abuse or exploitation shall be grounds for denial of a certificate. Notwithstanding the provisions of Title 5, chapter 341, any person who within 5 years of the application for initial certification or renewal has been convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child may be presumed by the commissioner to lack good moral character for purposes

of this chapter. This presumption shall be a rebuttable presumption. The commissioner shall be entitled to consider all records of prior criminal convictions involving child abuse or exploitation in determining an applicant's eligibility for a certificate.

Sec. 3. 20 MRSA §1752, sub-§4 is enacted to read:

4. Complaints confidential. Complaints, charges or accusations made and investigated pursuant to section 1755, replies to those complaints, charges or accusations and any other information or materials that may result in action to deny, revoke or suspend certification shall be confidential. Any charges or information filed by the commissioner with the Administrative Court in support of a petition to revoke or suspend certification and any decision of the court shall be public records.

Sec. 4. 20 MRSA §§1755 and 1756 are enacted to read:

§1755. Grounds for revocation or suspension of certificate

The following shall be grounds for revocation or suspension of a certificate issued under this Title:

1. Child abuse conduct. Evidence that a person has injured the health or welfare of a child through physical or sexual abuse or exploitation shall be grounds for revocation or suspension of a certificate. Notwithstanding the provisions of Title 5, chapter 341, a certified court record that a person certified under this Title was convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child within the previous 5 years shall be sufficient grounds for revocation or suspension of that person's certificate; and

2. Other grounds. Other grounds relating to fraud or criminal offenses not inconsistent with the provisions of Title 5, chapter 341, or gross incompetence, as shall be established by rule of the State Board of Education.

§1756. Reinstatement of certificate

The following provisions shall govern the reinstatement of any certificate revoked for reasons of child abuse.

1. Child abuse or exploitation. Notwithstanding

the provisions of Title 5, chapter 341, no certificate revoked for reasons of child abuse or exploitation shall be reinstated within 5 years of the revocation and in no case in less than 3 years from the expiration of any discharge from imprisonment for a criminal conviction involving child abuse or exploitation.

2. Rehabilitation. In determining whether a certificate may be reinstated, the commissioner shall determine whether the applicant has been sufficiently rehabilitated to warrant the public trust. The applicant shall be required to demonstrate sufficient evidence of rehabilitation, notwithstanding the provisions of Title 5, chapter 341, and the commissioner shall state in writing the basis for any decision which denies reinstatement of a certificate.

3. Denial of reinstatement. Denial of reinstatement may be appealed to the Superior Court.

Sec. 5. 20-A MRSA §6101, sub-§3 is enacted to read:

3. Commissioner's review. The commissioner shall have access to any of the records or documents designated as confidential in this section in carrying out his duties pursuant to sections 13001 to 13003.

Sec. 6. 20-A MRSA §13001, sub-§1, ¶¶D and E, as enacted by PL 1981, c. 693, §§5 and 8, are amended to read:

D. Seek a revocation or suspension of a certificate in the Administrative Court; and

E. The state board may adopt rules to carry out this subsection; and

Sec. 7. 20-A MRSA §13001, sub-§1, ¶F is enacted to read:

F. Enter into a consent agreement with any certificated person in lieu of initiating or completing a proceeding in the Administrative Court.

Sec. 8. 20-A MRSA §13001, sub-§5 is enacted to read:

5. Denial of certificate. Evidence that an applicant for initial certification or renewal has injured the health or welfare of a child through physical or sexual abuse or exploitation shall be grounds for denial of a certificate. Notwithstanding the provisions of Title 5, chapter 341, any person

who within 5 years of the application for initial certification or renewal has been convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child may be presumed by the commissioner to lack good moral character for purposes of this chapter. This presumption shall be a rebuttable presumption. Notwithstanding the provisions of Title 5, chapter 341, the commissioner shall be entitled to consider all records of prior criminal convictions involving child abuse or exploitation in determining an applicant's eligibility for a certificate.

Sec. 9. 20-A MRSA §13001, sub-§6 is enacted to read:

6. Grounds for revocation or suspension of a certificate. The following shall be grounds for revocation or suspension of a certificate issued under this Title.

A. Evidence that a person has injured the health or welfare of a child through physical or sexual abuse or exploitation shall be grounds for revocation or suspension of a certificate. Notwithstanding the provisions of Title 5, chapter 341, a certified court record that a person certificated under this Title was convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child within the previous 5 years shall be sufficient grounds for revocation or suspension of that person's certificate; and

B. Other grounds relating to fraud or criminal offenses not inconsistent with the provisions of Title 5, chapter 341, or gross incompetence, as may be established by rules of the State Board of Education.

Sec. 10. 20-A MRSA §13001, sub-§7 is enacted to read:

7. Reinstatement of certificate. The following provisions shall govern the reinstatement of any certificate revoked for reasons of child abuse or exploitation.

A. Notwithstanding the provisions of Title 5, chapter 341, no certificate revoked for reasons of child abuse or exploitation shall be reinstated within 5 years of the revocation and in no case less than 3 years from the expiration of probation or parole or discharge from imprisonment for a criminal conviction involving child abuse or exploitation.

B. In determining whether a certificate may be reinstated, the commissioner shall determine whether the applicant has been sufficiently rehabilitated to warrant the public trust. The applicant shall be required to demonstrate sufficient evidence of rehabilitation, notwithstanding the provisions of Title 5, chapter 341, and the commissioner shall state in writing the basis for any decision which denies reinstatement of a certificate.

C. Denial of reinstatement may be appealed to the Superior Court.

Sec. 11. 20-A MRSA §13004, sub-§2-A is enacted to read:

2-A. Complaints confidential. Complaints, charges or accusations made and investigated pursuant to section 13001, replies to those complaints, charges or accusations, and any other information or materials that may result in action to deny, revoke or suspend certification shall be confidential. Any charges or information filed by the commissioner with the Administrative Court in support of a petition to revoke or suspend certification and any decision of the court shall be public records.

Sec. 12. 22 MRSA §4008, sub-§3, ¶¶C and D, as enacted by PL 1979, c. 733, §18, are amended to read:

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; and

D. An appropriate state executive or legislative official with responsibility for child protection services in carrying out his official functions, provided that no personally identifying information may be made available unless necessary to his functions; and

Sec. 13. 22 MRSA §4008, sub-§3, ¶E is enacted to read:

E. Where the information concerns teachers and other professional personnel issued certificates under Title 20-A, the information shall be disclosed to the Commissioner of Educational and Cultural Services.

Emergency clause. In view of the emergency cited in the preamble, sections 1, 2, 3, 4, 12 and 13 shall take effect when approved. Sections 5, 6, 7, 8, 9, 10 and 11 shall take effect July 2, 1983.