

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

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PUBLIC LAWS

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each member any information it may reasonably require in order to facilitate the securing of this primary excess insurance. The association shall establish reasonable safeguards designed to ensure that information so received is used only for this purpose and is not otherwise disclosed;

(4) Be obligated to the extent of covered claims occurring prior to the determination of the self-insurer's insolvency, or occurring after such determination but prior to the obtaining of workers' compensation insurance as otherwise required under this Title by the self-insurer. Nothing in this section shall obligate the association to pay claims against a self-insurer which are not or have not been paid as a result of a determination of insolvency or the institution of bankruptcy or receivership proceedings which occurred prior to the effective date of this section.

(a) "Covered claim" means an unpaid claim against an insolvent self-insurer which relates to an injury which occurs while the self-insurer is a member of the association and which is compensable under this Act;

(5) After paying any claim resulting from a self-insurer's insolvency, the association shall be subrogated to the rights of the injured employee and dependents and shall be entitled to enforce liability against the self-insurer by any appropriate action brought in its own name or in the name of the injured employee and dependents;

(6) Assess the fund in an amount necessary to pay:

(a) The obligations for the association under this section subsequent to an insolvency;

(b) The expenses of handling covered claims subsequent to an insolvency;

(c) The costs of examinations under subsection 8; and

(d) Other expenses authorized by this chapter;

(7) Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements to which the insolvent self-insurer was a party to determine the extent to which such settlements may be properly contested;

(8) Notify such persons as the superintendent directs under subsection 7;

(9) Handle claims through its employees or through one or more self-insurers or other persons designated as servicing facilities. Designation of a servicing

facility is subject to the approval of the superintendent, but designation of a member self-insurer as a servicing facility may be declined by such self-insurer;

(10) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association; and

(11) Pay the other expenses of the association authorized by this section.

(a) Establish in the plan of operation a mechanism to calculate the assessments required by subparagraphs (1), (2) and (3) by a simple and equitable means to convert from policy or fund years which are different from a calendar year.

Sec. 3. 39 MRSA §23-A, sub-§4, ¶¶E and F are enacted to read:

E. For the purposes of this subsection, "annual standard premium for an individual self-insurer" means the annual premium produced by applying the manual rates, rating rules, excluding any premium discount, and experience rating procedure approved by the Superintendent of Insurance for the Safety Pool of the residual market mechanism described in Title 24-A, section 2350, to the exposure and experience of the individual self-insurer.

F. For the purposes of this subsection, "annual standard premium for a group self-insurer" means the total annual premium that would have been paid by all members of that group using the manual rates, rating rules, excluding any premium discount, and experience rating procedure approved by the Superintendent of Insurance for that self-insurer.

Effective September 29, 1987.

CHAPTER 273

H.P. 1165 — L.D. 1591

AN ACT to Amend the Maine Emergency Medical Services Act of 1982.

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

Sec. 1. 32 MRSA §83, sub-§16, as enacted by PL 1981, c. 661, §2, is amended to read:

16. Licensed ambulance attendant. "Licensed ambulance attendant" means a basic emergency medical person who has completed the minimum training specified in section 85, ~~subsection 2~~ subsection 3 and has met the other conditions specified in regulations under this chapter for licensure at this level.

Sec. 2. 32 MRSA §83, sub-§18, as amended by PL 1985, c. 730, §§8 and 16, is further amended to read:

18. Office of Emergency Medical Services. "Office of Emergency Medical Services" means the administrative unit within the Department of Human Services as to which the board assigns responsibility for carrying out the purposes of this chapter.

Sec. 3. 32 MRSA §83, sub-§22, as enacted by PL 1981, c. 661, §2, is amended to read:

22. Statewide emergency medical services' medical director. "Statewide emergency medical services' medical director" means a licensed physician appointed by the commissioner board.

Sec. 4. 32 MRSA §84, sub-§1, ¶D, as amended by PL 1985, c. 730, §§9 and 16, is further amended to read:

D. Rules promulgated pursuant to this chapter shall include, but not be limited to, the following:

- (1) The composition of regional councils and the process by which they come to be recognized as representing their regions;
- (2) The manner in which regional councils shall report their activities and finances, and the manner in which those activities shall be carried out under this chapter;
- (3) The designation of regions within the State;
- (4) The requirements for licensure for all vehicles, persons and services subject to this chapter, and including training and testing of personnel; and
- (5) Fees to be charged for licenses under this section, except that no fee may be charged for the licensing of emergency medical services' persons under this chapter.

In adopting any rule under subparagraph (4) which requires services which deliver advanced care to meet a specified percentage level of performance, the regulation shall not take effect ~~until after January 1, 1986~~ and unless the level is specified after study, in cooperation with regional councils and local service units.

~~In addition, notwithstanding current rules, until January 1, 1986, requirements for licensure at the intermediate level shall allow an applicant to be licensed for intravenous therapy or defibrillation therapy, or both.~~

Sec. 5. 32 MRSA §88, sub-§1, ¶D, as enacted by PL 1985, c. 730, §§12 and 16, is amended to read:

D. A majority of the members appointed and currently serving shall constitute a quorum for all purposes and no decision of the board may be made without a

quorum present. A majority vote of those present and voting shall be required for board action ~~with the exception of a 2/3 vote being required for the suspension or revocation of a license, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members.~~ When the board is required to take emergency action and it is not possible to convene a meeting of the board in a timely manner, the board may take any action authorized by telephonic conference or by any other means authorized by rule.

Sec. 6. 32 MRSA §90, as amended by PL 1985, c. 730, §§13 and 16, is repealed.

Sec. 7. 32 MRSA §91, as enacted by PL 1985, c. 730, §§14 and 16, is repealed.

Sec. 8. 32 MRSA §§90-A and 91-A are enacted to read:

§90-A. Disciplinary actions

1. Disciplinary proceedings and sanctions. The board or its staff shall investigate a complaint, on the board's own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of any rules adopted by the board. Investigation may include a hearing before the board or the board's staff to determine whether grounds exist for suspension, revocation or denial of a license or as otherwise deemed necessary by the board to the fulfillment of its responsibilities under this chapter. Hearings shall be conducted in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable. The board or department may subpoena witnesses, records and documents, including records and documents maintained by a health care facility or other service organization or person related to the delivery of emergency medical services, in any hearing it conducts.

2. Notice. The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but in no event later than 60 days after the board or its staff receives the initial pertinent information. The licensee shall have the right to respond within 30 days in all cases except those involving an emergency denial, suspension or revocation, as described in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter V. If the licensee's response to the complaint satisfies the board or its staff that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

3. Informal conference. If, in the opinion of the board, the factual basis of the complaint is or may be true

and it is of sufficient gravity to warrant further action, the board or its staff may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference shall be conducted in executive session of the board, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

4. Further action by the board. If the board finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it deems appropriate.

A. With the consent of the licensee, the board may enter into a consent agreement which fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Office of the Attorney General.

B. In consideration for acceptance of a voluntary surrender of the license, the board may negotiate stipulations, including terms and conditions for reinstatement, which ensure protection of the public health and safety and which serve to rehabilitate or educate the licensee. These stipulations shall be set forth only in a consent agreement signed by the board, the licensee and the Office of the Attorney General.

C. If the board concludes that modification, non-renewal or nonissuance of the license is in order, the board shall so notify the applicant-licensee and inform him of his right to request an adjudicatory hearing. If the applicant-licensee timely requests such a hearing, it shall be held by the hearings unit of the department in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. At the conclusion of the hearing, the hearing officer shall forward a written finding of facts and recommended decision to the commissioner. Opportunity shall then be given for the applicant-licensee and the board to file comments on the findings of fact and recommended decision to the commissioner. The commissioner, after considering the findings, recommendations and comments, shall either adopt or reject the recommended decision within a reasonable period of time. If the commissioner rejects the recommendation or issues a modified decision, the commissioner's written decision shall contain the specific reasons for modifying or rejecting the recommended decision. The commissioner's decision shall be the department's final decision.

D. Except in the specific circumstances where the Maine Administrative Procedure Act, Title 5, section 10004 may be invoked, if the board concludes that suspension or revocation of the license is in order, the board shall hold a hearing or file a complaint in the Administrative Court in accordance with Title 4, chap-

ter 25, to commence either full or emergency proceedings.

5. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5, section 10004. The following shall be grounds for an action either to refuse to issue or renew a license or to modify, suspend or revoke or refuse to renew the license of a person, service or vehicle licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued;

B. Habitual intemperance in the use of alcohol or the habitual use of narcotic, hypnotic or other substances, the use of which has resulted or is likely to result in the licensee performing his duties in a manner which endangers the health or safety of his patients;

C. A professional diagnosis of a mental or physical condition which has resulted or is likely to result in the licensee performing his duties in a manner which endangers the health or safety of his patients;

D. Aiding or abetting the practice of emergency care by a person not duly licensed under this chapter and who represents himself to be so;

E. Incompetence in the practice for which he is licensed. A licensee shall be deemed incompetent in the practice if the licensee has:

(1) Engaged in conduct which evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client, patient or the general public; or

(2) Engaged in conduct which evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which he is licensed;

F. Unprofessional conduct. A licensee shall be deemed to have engaged in unprofessional conduct if he violates any standard of professional behavior which has been established in the practice for which the licensee is licensed;

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime which involves dishonesty or false statement which relates directly to the practice for which the licensee is licensed or conviction of any crime for which incarceration for one year or more may be imposed;

H. Any violation of this chapter or any rule adopted by the board; or

I. For other purposes as specified by rules or law.

§91-A. Appeals

Any person or organization aggrieved by the decision

of the board in refusing to issue or renew a license or to waive application of a particular rule may appeal the board's decision to the department's hearings unit for a full adjudicatory hearing and for a final decision by the commissioner. The board's decision shall stand until such time as the commissioner issues a decision to uphold, modify or overrule the board's decision.

Any person or organization aggrieved by a final decision of the commissioner in refusing to issue or renew a license or to waive application of a particular rule may appeal the commissioner's decision to the Superior Court in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

Effective September 29, 1987.

CHAPTER 274

S.P. 81 — L.D. 167

AN ACT to Expedite the Processing of Environmental Permits.

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

Sec. 1. 38 MRSA §344, sub-§2, ¶E, as amended by PL 1985, c. 746, §9, is further amended to read:

E. Applications under section 483 for site location development permits for subdivisions and for structures at an existing industrial or commercial facility, approved pursuant to section 483 or 484, which do not increase the square footage of the total ground area of the facility by more than 50%;

Sec. 2. 38 MRSA §344, sub-§2, ¶H, as enacted by PL 1983, c. 453, §1, is amended to read:

H. Applications under section 590 pertaining to air emissions licenses for all petroleum storage facilities, for incinerators or boilers with capacities of less than ~~150,000,000~~ 250,000,000 British Thermal Units per hour, or which do not result in a net increase in emissions at any industrial or commercial facility, and for all general process sources;

Effective September 29, 1987.

CHAPTER 275

H.P. 662 — L.D. 895

AN ACT to Extend Maine's Bottle Bill.

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

Sec. 1. 32 MRSA §1862, sub-§1, as enacted by PL 1975, c. 739, §16, is amended to read:

1. Beverage. "Beverage" means beer, ale or other drink produced by fermenting malt, soda water or other nonalcoholic carbonated drink in liquid form and intended for human consumption. "Beverage" also includes wine coolers. "Wine cooler" means a beverage containing wine and more than 15% added natural or artificial blending material, such as fruit juices, flavors, flavorings or adjuncts; plain, carbonated or sparkling water; coloring; or preservatives, and which contains less than 7% of alcohol by volume.

Sec. 2. **Effective date.** This Act shall take effect July 1, 1988.

Effective July 1, 1988.

CHAPTER 276

S.P. 499 — L.D. 1516

AN ACT to Clarify the Laws Pertaining to Payment for Medical Services.

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

34-A MRSA §3031, sub-§2, as amended by PL 1985, c. 752, §3, is further amended to read:

2. Medical care. Adequate professional medical care, not including medical treatment requested by the prisoner committed offender which the correctional facility's treating physician deems unnecessary. The State may bring a civil action in any court of competent jurisdiction to recover the cost of any medical, dental, psychiatric or psychological expenses incurred by the State on behalf of any prisoner committed offender incarcerated in a correctional facility. The following assets are not subject to judgment under this subsection:

A. Joint ownership, if any, that the offender may have in real property;

B. Joint ownership, if any, that the offender may have in any assets, earnings or other sources of income; and

C. The income, assets, earnings or other property, both real and personal, owned by the offender's spouse or family;

Effective September 29, 1987.

CHAPTER 277

S.P. 521 — L.D. 1573