

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

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
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ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

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. 29 MRSA §2713, sub-§3, ¶A, as amended by PL 1985, c. 350, §1, is further amended to read:

A. There shall be allocated to the Department of Public Safety for State Police up to ~~\$1,100,000~~ \$1,200,000 annually from the fund to carry out the statutory duties of the bureau imposed by this chapter and Title 35 and for related activities.

Sec. 2. Allocation of Transportation Safety Fund. Income to the Transportation Safety Fund for the next 2 fiscal years, from July 1, 1987, to June 30, 1988, and from July 1, 1988, to June 30, 1989, shall be segregated, apportioned and disbursed as designated in the following schedule:

| | 1987-88 | 1988-89 |
|-------------------------------------|--------------------|--------------------|
| <u>PUBLIC SAFETY, DEPARTMENT OF</u> | | |
| Motor Carrier Safety | | |
| Positions | (25) | (25) |
| Personal Services | \$636,784 | \$654,902 |
| All Other | 107,448 | 112,276 |
| Capital Expenditures | 98,108 | 49,886 |
| Traffic Safety | | |
| Positions | (6) | (6) |
| Personal Services | \$217,758 | \$226,109 |
| All Other | 37,074 | 38,724 |
| Capital Expenditures | 66,690 | 43,818 |
| DEPARTMENT OF PUBLIC SAFETY | | |
| TOTAL | <u>\$1,163,862</u> | <u>\$1,125,715</u> |

Sec. 3. Adjustments to allocations. Allocations may be increased or adjusted by the State Budget Officer, with the approval of the Governor, to specifically cover those adjustments determined to be necessary under any salary plan approved by the Legislature, and those reclassifications or range changes which have been approved by the Department of Administration and submitted for legislative review prior to the effective date of this Act.

Sec. 4. Encumbered balance at year end. At the end of each fiscal year, all encumbered balances shall not be carried more than once.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect on July 1, 1987.

Effective July 1, 1987.

CHAPTER 443

H.P. 1099 — L.D. 1490

AN ACT Requiring that Informed Consent be Given to those Persons Tested for the Presence of Antibodies to HIV and to Make Technical Changes in the Chapter Dealing with AIDS.

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

Whereas, this Act reallocates the chapter of Maine law dealing with AIDS because it currently occupies the same identical position in the laws as the Maine State Retirement System laws; and

Whereas, there will be a conflict with legislation enacted this year if this chapter is not reallocated prior to the effective date of other legislation enacted this year; 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. 5 MRSA Pt. 20, as enacted by PL 1985, c. 711, §2, is repealed.

Sec. 2. 5 MRSA Pt. 22 is enacted to read:

PART 22

PUBLIC HEALTH

CHAPTER 501

MEDICAL CONDITIONS

§19201. Definitions

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

1. Antibody to HIV. "Antibody to HIV" means the specific immunoglobulin produced by the body's immune system in response to HIV.

2. Health care provider. "Health care provider" means any appropriately licensed, certified or registered provider of mental or physical health care, either in the public or private sector or any business establishment providing health care services.

3. HIV. "HIV" means the human immunodeficiency

virus, identified as the causative agent of Acquired Immune Deficiency Syndrome or AIDS.

4. HIV antigen. "HIV antigen" means the specific immune-recognizable marker proteins of HIV.

5. HIV infection. "HIV infection" means the state wherein HIV has invaded the body and is being actively harbored by the body.

5-A. Informed consent. "Informed consent" means consent that is:

A. Based on an actual understanding by the person to be tested:

- (1) That the test is being performed;
- (2) Of the nature of the test;
- (3) The persons to whom the results of that test may be disclosed;
- (4) The purpose for which the test results may be used; and
- (5) All foreseeable risks and benefits resulting from the test; and

B. Wholly voluntary and free from express or implied coercion.

6. Person. "Person" means any natural person, firm, corporation, partnership or other organization, association or group, however organized.

7. Seropositivity. "Seropositivity" means the presence of antibody to HIV as detected by appropriate laboratory tests.

8. Viral positivity. "Viral positivity" means demonstrated presence of HIV.

§19202. Committee to Advise the Department of Human Services on AIDS

The Committee to Advise the Department of Human Services on AIDS, as established by section 12004, subsection 10, shall consist of not less than 26 members nor more than 30 members to include representation of: One allopathic physician from nominees submitted by the Maine Medical Association; one osteopathic physician from nominees submitted by the Maine Osteopathic Association; one nursing home administrator from nominees submitted by the Maine Health Care Association; one funeral director from nominees submitted by the Maine Funeral Directors Association; one social worker from nominees submitted by the Maine Chapter of the National Association of Social Workers; one public school administrator from a local school district from nominees submitted by the Maine Superintendents Association; one nurse from nominees submitted by the Maine State

Nurses Association; one representative from nominees submitted by the Maine Hospice Council; one teacher from nominees submitted by the Maine Teachers Association; 2 members of the high risk community; one insurance industry representative; one employee of a community mental health center; one dentist from nominees submitted by the Maine Dental Association; one state employee from nominees submitted by the Maine State Employees Association; 2 members of the public, including one parent of a school-age child; the Commissioner of Human Services or his designee who shall serve during the commissioner's term of office; one psychologist from nominees submitted by the Maine Psychological Association; one state employee from nominees submitted by the American Federation of State, County and Municipal Employees; one member representing hospitals from nominees submitted by the Maine Hospital Association; one member representing public health professionals from nominees submitted by the Maine Public Health Association; one representative of a non-profit hospital or medical service organization; one substance abuse counselor; one member of the clergy; and 2 Legislators, one representative appointed by the Speaker of the House and one Senator appointed by the President of the Senate. The members, except for those specifically designated in this paragraph, shall be appointed by the Governor for their competence and experience in connection with these fields.

1. Membership. The term of office of each member shall be 3 years; provided that of the members first appointed, 1/3 shall be appointed for a term of one year, 1/3 for terms of 2 years and 1/3 for terms of 3 years. The Governor shall designate a chairman and vice-chairman to serve at the pleasure of the Governor. The chairman shall be the presiding member of the committee. All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments. The members of the committee shall be compensated in accordance with chapter 379.

2. Duties. The committee shall advise the department on:

- A. Content and dissemination of educational materials;
- B. Crises that may develop;
- C. Coordination of services to persons with AIDS, AIDS Related Complex or viral positivity;
- D. Coordination of services for family and other persons providing care and support to persons with AIDS, AIDS Related Complex or viral positivity; and
- E. AIDS related policy and proposed rules.

3. Meetings. The advisory committee shall meet at least 4 times a year and more frequently if needed to respond to the duties of this committee as specified in subsection 2. Special meetings may be called by the chair-

man and shall be called at the request of the State Epidemiologist, the Director of the Bureau of Health, the Director of Disease Control, the Director of Sexually Transmitted Diseases or by 3 or more members of the committee.

§19203. Confidentiality of test

No person may disclose the results of a test for the presence of an antibody to HIV, a test that measures the HIV antigen, except as follows:

1. Subject of test. To the subject of the test;
2. Designated health care provider. To the subject's designated health care provider in the treatment of AIDS;
3. Authorized person. To a person or persons to whom the test subject has authorized disclosure in writing, except that the disclosure may not be used to violate any other provision of this chapter;
4. Certain health care providers. A health care provider who procures, processes, distributes or uses a human body part donated for a purpose may, without obtaining informed consent to the testing, test for the presence of an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended;
5. Research facility. The Department of Human Services, a laboratory certified and approved by the Department of Human Services pursuant to Title 22, chapter 411, or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining informed consent to the testing, subject any body fluids or tissues to a test for the presence of an antibody to HIV if the testing is performed in a manner by which the identity of the test is subject is not known and may not be retrieved by the researcher;
6. Anonymous testing sites. The Department of Human Services may designate or establish certification and approval standards for and support anonymous testing sites where an individual may request and HIV test under conditions which ensure anonymity; or

7. Other agencies. To other agencies responsible for the custodial care of individuals, such as the Department of Corrections and the Department of Mental Health and Mental Retardation.

This section does not prohibit limited administrative disclosure in conjunction with a mandatory testing program of a military organization subject to Title 37-B.

§19203-A. Informed consent required

1. Individual tested. Except as provided in section 19203, subsections 4 and 5, no person may test for the presence of antibodies to HIV without first obtaining the

written informed consent of the person to be tested. Anonymous test sites under section 19203, subsection 6, are exempt from the requirement that the informed consent be in writing.

2. Insurers. Persons required to take the HIV antibody test by an insurer, nonprofit hospital or medical service organization or nonprofit health care plan must provide their written informed consent on forms approved by the Superintendent of Insurance. The superintendent may promulgate rules to define language requirements of the form.

§19204. Restrictions upon revealing HIV antibody test results

No insurer, nonprofit hospital or medical services organization or nonprofit health care plan may request any person to reveal whether the person has obtained a test for the presence of antibodies to HIV, a test to measure the virus or the results of such tests taken prior to an application for insurance coverage.

This section is repealed on October 1, 1988.

§19204-A. Post-test counseling

Persons who are required to give their informed consent to an HIV test shall be offered post-test counseling. The counseling shall include:

1. Test result. The test results and the significance of the test results;
2. Social and emotional consequences. The social and emotional consequences of the information;
3. Preventive practices. Information on good preventive practices and risk reduction plans; and
4. Referrals. Referrals for medical care and other support services as needed.

§19205. Coordination of services to persons with AIDS, AIDS Related Complex and viral positivity

1. Policy; services. It shall be the policy of the State to provide to persons who test positive for HIV or have been diagnosed as having AIDS or Aids Related Complex services of departments and agencies, including, but not limited to, the Department of Educational and Cultural Service, the Department of Mental Health and Retardation, the Department of Human Services and the Department of Corrections.

2. Coordination of services. A person designated by the Commissioner of Human Services shall insure coordination of new and existing services so as to meet the needs of persons with AIDS, Aids Related Complex and viral positivity and identify gaps in programs.

The committee established in section 12004, subsection 10, shall work with the person designated in this chap-

ter to insure the coordination of services to meet the needs of persons with AIDS, ARC and viral positivity.

§19206. Civil liability

Any person violating sections 19203 and 19204 is liable to the subject of the test for actual damages and costs plus a civil penalty of up to \$1,000 for a negligent violation and up to \$5,000 for an intentional violation.

Any person may bring an action for injunctive relief for a violation of sections 19203 and 19204 in addition to or instead of the penalties provided in this section. The applicant for injunctive relief under this section shall not be required to give security as a condition upon the issuance of the injunction.

§19207. Civil liability

Any person violating sections 19203 and 19204 is liable to the subject of the test for actual damages and costs plus a civil penalty of up to \$1,000 for a negligent violation and up to \$5,000 for an intentional violation.

Any person may bring an action for injunctive relief for a violation of sections 19203 and 19204 in addition to or instead of the penalties provided in this section. The applicant for injunctive relief under this section shall not be required to give security as a condition upon the issuance of the injunction.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 26, 1987.

CHAPTER 444

H.P. 1337 — L.D. 1827

AN ACT to Create an Agricultural Market Research and Development Fund Program.

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

7 MRSA §401-D is enacted to read:

§401-D. Agricultural Market Research and Development Fund

1. Agricultural Market Research and Development Fund. In order to provide greater returns to the State's agricultural economy through improved marketing of Maine agricultural products, the Agricultural Market Research and Development Fund is established to encourage careful and thorough analysis of market potential and more extensive development of markets for Maine agricultural products. This fund shall be nonlapsing and include money appropriated by the Legislature for this purpose and money received from other public or private sources.

2. Fund uses and limitations. The fund shall be used to provide grants to individuals, firms or organizations to conduct market research or to undertake market development activities for the purpose of expanding existing markets and developing new markets for Maine agricultural products. At least 25% of the total cost of any project shall be funded by the applicant or applicants and at least 10% of the total cost shall be funded from nonpublic sources. No single grant may exceed 20% of the total funds available to be granted in a given year. Preference shall be given to projects targeted to markets in which Maine products do not already have a significant presence.

3. Applications. In the case of market research proposals, an application for a grant shall include an appropriate market research design. In the case of market development proposals, an application for a grant shall include a marketing plan which reflects an understanding of the target market addressed and a clearly articulated marketing strategy. The Department of Agriculture, Food and Rural Resources shall provide, upon request from a potential applicant, assistance with application preparation.

4. Rules. The commissioner shall establish, by rule, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, criteria for the allocation of grant money, application requirements consistent with the provisions of this section, a schedule for accepting and reviewing applications, reporting requirements on grant expenditures and project results and any other administrative requirements necessary for the efficient implementation of this program.

5. Proprietary information. Information relative to market research or development activities provided to the department prior to formal application, included in grant applications or provided to the department to fulfill reporting requirements, is confidential information and shall not be publicly disclosed by the department, provided that:

A. The person to whom the information belongs or pertains has requested that it be designated as confidential; and

B. The department has determined that the information gives the person making the request opportunity to obtain business or competitive advantage over another person who does not have access to the information or will result in loss of business or other significant detriment to the person making the request if access is provided to others.

Effective September 29, 1987

CHAPTER 445

S.P. 610 — L.D. 1800