

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES
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Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

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AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
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1987

administrative unit. Except as provided in subsection 2, these state allocation payments may be expended only for costs attributable to transportation operation activities or school bus purchases. State allocation payments expended in accordance with this subsection shall be considered as a school cost for future school subsidy purposes.

2. Exception. The school board for the unit may, by a 2/3 vote, specifically authorize the use of the funds specified in subsection 1 for another purpose or may carry such funds forward for use in the transportation account in succeeding years.

Effective August 4, 1988.

CHAPTER 660

H.P. 1859 — L.D. 2545

AN ACT to Assist Agricultural Employers in Complying with Federal Hazard Communication Rules.

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

Sec. 1. 22 MRSA §1471-M, sub-§3, as enacted by PL 1983, c. 568, §2, is amended to read:

3. Chemical substance identification. The To the extent permitted under federal law, the board shall have primary enforcement responsibility for inspection of any workplace subject to the provisions of Title 26, chapter 22, solely because of the presence of a pesticide. The board shall have primary enforcement responsibility for training programs to be provided by employers under Title 26, chapter 22, in those instances where the employer is subject to the provisions of that law solely because of the presence or use of a pesticide.

The board shall assist the Director of the Bureau of Labor Standards in providing education and training in accordance with Title 26, section 1720, to aid agricultural employers in complying with the federal requirements for hazard communication and shall assist the responsible state agencies in providing education and training to aid agricultural employers in complying with the federal requirements for emergency and hazardous chemical inventory forms and community right-to-know reporting.

Sec. 2. 26 MRSA §61, sub-§2, as repealed and replaced by PL 1987, c. 559, Pt. B, §8, is amended to read:

2. Source of funds. The commissioner shall annually assess a levy based on actual annual workers' compensation paid losses, excluding medical payments, paid in the previous calendar year by employers under Title 39, the Workers' Compensation Act. As soon as practicable after July 1st of each year, the commissioner shall assess upon and collect from each insurance carrier

licensed to do workers' compensation business in the State, and each group and individual self-insured employer authorized to make workers' compensation payments directly to their employees, a sum equal to that proportion of the current fiscal year's appropriation, exclusive of any federal funds, for the safety education and training division which the total workers' compensation benefits, exclusive of medical payments, paid by each carrier or each group or individual self-insured employer, bear to the total of the benefits paid by all carriers, and group and individual self-insured employers, during the previous calendar year, except that the total amount levied annually may not exceed 1% of the total of the compensation benefits paid by all carriers, and group and individual self-insured employers during the previous calendar year. Assessments under this section shall include sufficient funds to provide for training and information activities relating to pesticides as required by section 1720, subsection 5.

Sec. 3. 26 MRSA §1720, sub-§5 is enacted to read:

5. Assistance to agricultural employers. The director shall provide assistance to agricultural employers in the development and conduct of training programs for employees with respect to hazardous chemicals which are pesticides and in satisfying the information requirements of the Federal Occupational Safety and Health Administration's Hazard Communication Standard, Title 29, Code of Federal Regulation, Part 1910.1200. In providing this assistance, the director shall consult with the Board of Pesticides Control and, to the maximum extent practicable, shall work through the Cooperative Extension Service.

Effective August 4, 1988.

CHAPTER 661

H.P. 1851 — L.D. 2534

AN ACT to Ensure Family Medical Leave in the State.

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

26 MRSA c. 7, sub-c. VI-A is enacted to read:

SUBCHAPTER VI-A

FAMILY MEDICAL LEAVE REQUIREMENTS

§843. Definitions

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

1. Employee. "Employee" means any person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to en-

gage in any employment but does not include an independent contractor.

2. Employee benefits. "Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

3. Employer. "Employer" means:

A. Any person, sole proprietorship, partnership, corporation, association or other business entity that employs 25 or more employees at one location in this State;

B. The State, including the executive, legislative and judicial branches, and any state department or agency that employs any employees;

C. Any city, town or municipal agency that employs 25 or more employees; and

D. Any agent of an employer, the State or a political subdivision of the State.

4. Family medical leave. "Family medical leave" means leave requested by an employee for:

A. Serious illness of the employee;

B. The birth of the employee's child;

C. The placement of a child 16 years of age or less with the employee in connection with the adoption of the child by the employee; or

D. A child, parent or spouse with a serious illness.

5. Serious illness. "Serious illness" means an accident, disease or condition that:

A. Poses imminent danger of death;

B. Requires hospitalization involving an organ transplant, limb amputation or other procedure of similar severity; or

C. Any mental or physical condition that requires constant in-home care.

§844. Family medical leave requirement

1. Family medical leave entitlement. Every employee who has been employed by the same employer for 12 consecutive months is entitled to up to 8 consecutive work weeks of family medical leave in any 2 years. The following conditions apply to family medical leave granted under this subchapter:

A. The employee must give at least 30 days notice

of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice;

B. The employer may require certification from a physician to verify the amount of leave requested by the employee; and

C. The employer and employee may negotiate for more or less leave, but both parties must agree.

2. Unpaid leave. Family medical leave granted under this subchapter may consist of unpaid leave. If an employer provides paid family medical leave for fewer than 8 weeks, the additional weeks of leave added to attain the total of 8 weeks required may be unpaid.

§845. Employee benefits protection

1. Restoration. Any employee who exercises the right to family medical leave under this subchapter, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This subsection does not apply if the employer proves that the employee was not restored as provided in this subsection because of conditions unrelated to the employee's exercise of rights under this subchapter.

2. Maintenance of employee benefits. During any family medical leave taken under this subchapter, the employer shall make it possible for employees to continue their employee benefits at the employee's expense.

§846. Effect on existing employee benefits

1. Benefit accrual. The taking of family medical leave under this subchapter shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

2. Effect on collective bargaining. Nothing in this subchapter may be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater family medical leave rights to employees than the rights provided under this subchapter.

3. Rights not diminished. The family medical leave rights mandated by this subchapter may not be diminished by any collective bargaining agreement or by any employee benefit plan.

4. Contract rights. Nothing in this subchapter may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered by this subchapter.

§847. Prohibited acts

1. Unlawful interference or denial of rights. The employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this subchapter.

2. Unlawful discrimination against exercise of rights. The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for exercising any right provided by this subchapter.

3. Unlawful discrimination against opposition. The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this subchapter.

§848. Judicial enforcement

A civil action may be brought in the appropriate court by an employee against any employer to enforce this subchapter. The court may enjoin any act or practice that violates or may violate this subchapter and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this subchapter. The court may also order the employer to pay as liquidated damages \$100 to the employee for each day the violation continues.

§849. Review; sunset

The joint standing committee of the Legislature having jurisdiction over labor shall review the provisions and effectiveness of this subchapter before March 15, 1990. This subchapter is repealed July 1, 1990.

Effective August 4, 1988.

CHAPTER 662

H.P. 1692 — L.D. 2321

AN ACT to Clarify the Reporting Mechanism of the Student Assessment Program.

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

Sec. 1. 20-A MRSA §6204, sub-§1, ¶A is enacted to read:

A. When a report is made under this subsection for purposes of comparative analysis, the reporting mechanisms and the categories reported shall be uniform for each school.

Sec. 2. 20-A MRSA §6204, sub-§2, ¶A is enacted to read:

A. Every profile provided under this subsection shall use reporting mechanisms and categories which are

uniform for each school.

Effective August 4, 1988.

CHAPTER 663

H.P. 1863 — L.D. 2549

AN ACT to Amend the Maine Business Corporation Act to Define the Liability of Directors and to Modernize Indemnification Provisions.

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

Sec. 1. 13-A MRSA §716, as amended by PL 1985, c. 394, §2, is further amended by adding at the end a new paragraph to read:

A director shall not be held personally liable for monetary damages for failure to discharge any duty as a director unless the director is found not to have acted honestly or in the reasonable belief that the action was in or not opposed to the best interests of the corporation or its shareholders.

Sec. 2. 13-A MRSA §719, as repealed and replaced by PL 1975, c. 439, §7, is repealed and the following enacted in its place:

§719. Indemnification of officers, directors, employees and agents; insurance

1. A corporation shall have power to indemnify or, if so provided in the bylaws, shall in all cases indemnify, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that that person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, trustee, partner, fiduciary, employee or agent of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by that person in connection with such action, suit or proceeding; provided that no indemnification may be provided for any person with respect to any matter as to which that person shall have been finally adjudicated:

A. Not to have acted honestly or in the reasonable belief that that person's action was in or not opposed to the best interests of the corporation or its shareholders or, in the case of a person serving as a fiduciary of an employee benefit plan or trust, in or not opposed to the best interests of that plan or trust, or its participants or beneficiaries; or

B. With respect to any criminal action or proceeding,