

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
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
and
SECOND REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

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 This subchapter is repealed July 1, 1990.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,

to have had reasonable cause to believe that that person's conduct was unlawful.

The termination of any action, suit or proceeding by judgment, order or conviction adverse to that person, or by settlement or plea of nolo contendere or its equivalent, shall not of itself create a presumption that that person did not act 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 and, with respect to any criminal action or proceeding, had reasonable cause to believe that that person's conduct was unlawful.

1-A. Notwithstanding any provision of subsection 1, a corporation shall not have the power to indemnify any person with respect to any claim, issue or matter asserted by or in the right of the corporation as to which that person is finally adjudicated to be liable to the corporation unless the court in which the action, suit or proceeding was brought shall determine that, in view of all the circumstances of the case, that person is fairly and reasonably entitled to indemnity for such amounts as the court shall deem reasonable.

2. Any provision of subsection 1, 1-A or 3 to the contrary notwithstanding, to the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection 1 or 1-A, or in defense of any claim, issue or matter therein, that director, officer, employee or agent shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by that director, officer, employee or agent in connection therewith. The right to indemnification granted by this subsection may be enforced by a separate action against the corporation, if an order for indemnification is not entered by a court in the action, suit or proceeding wherein that director, officer, employee or agent was successful on the merits or otherwise.

3. Any indemnification under subsection 1, unless ordered by a court or required by the bylaws, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances and in the best interests of the corporation. That determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to that action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders. Such a determination once made may not be revoked and, upon the making of that determination, the director, officer, employee or agent may enforce the indemnification against the corporation by a separate action notwithstanding any attempted or

actual subsequent action by the board of directors.

4. Expenses incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding may be authorized and paid by the corporation in advance of the final disposition of that action, suit or proceeding upon a determination made in accordance with the procedure established in subsection 3 that, based solely on the facts then known to those making the determination and without further investigation, the person seeking indemnification satisfied the standard of conduct prescribed by subsection 1, or if so provided in the bylaws, these expenses shall in all cases be authorized and paid by the corporation in advance of the final disposition of that action, suit or proceeding upon receipt by the corporation of:

A. A written undertaking by or on behalf of the officer, director, employee or agent to repay that amount if that person is finally adjudicated:

(1) 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 such plan or trust or its participants or beneficiaries;

(2) With respect to any criminal action or proceeding, to have had reasonable cause to believe that the person's conduct was unlawful; or

(3) With respect to any claim, issue or matter asserted in any action, suit or proceeding brought by or in the right of the corporation, to be liable to the corporation, unless the court in which that action, suit or proceeding was brought permits indemnification in accordance with subsection 2; and

B. A written affirmation by the officer, director, employee or agent that the person has met the standard of conduct necessary for indemnification by the corporation as authorized in this section.

The undertaking required by paragraph A shall be an unlimited general obligation of the person seeking the advance, but need not be secured and may be accepted without reference to financial ability to make the repayment.

5. The indemnification and entitlement to advances of expenses provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in that person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, agent, trustee, partner or fiduciary and shall inure to the benefit of the heirs, executors and administrators of such a person. A right to indemnifi-

cation required by the bylaws may be enforced by a separate action against the corporation, if an order for indemnification has not been entered by a court in any action, suit or proceeding in respect to which indemnification is sought.

6. A corporation shall have power to purchase and maintain insurance on behalf of any person who 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 any liability asserted against that person and incurred by that person in any such capacity, or arising out of that person's status as such, whether or not the corporation would have the power to indemnify that person against such liability under this section.

7. For purposes of this section, references to the "corporation" shall include, in addition to the surviving corporation or new corporation, any participating corporation in a consolidation or merger.

Effective August 4, 1988.

CHAPTER 664

S.P. 809 — L.D. 2118

AN ACT to Clarify the Experience Requirement for Licensed Dietitians.

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

Whereas, An Act Requiring Registration of Dietitians was enacted by the Legislature in 1985 and amended in 1987 to require licensing for all practicing dietitians; and

Whereas, certain requirements of that law have prevented and continue to prevent otherwise fully qualified, practicing dietitians from obtaining licenses to practice dietetics in the State; and

Whereas, these dietitians are in jeopardy of losing their livelihood; and

Whereas, these dietitians are performing valuable services to the people of the State; 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. 32 MRSA §9907, sub-§1, ¶C, as enacted by PL 1985, c. 389, §28, is amended to read:

C. An applicant shall submit to the board evidence of having successfully completed the experience requirements approved by the American Dietetic Association or equivalent experience approved by the board. That experience shall include at least 6 months full-time ~~clinical~~ experience in the field of dietetics, or its part-time equivalent. The experience shall have been acquired during or within 5 years of completion of the academic requirements in paragraph B and or not more than 5 years before the date of license application.

Sec. 2. 32 MRSA §9907, sub-§1, ¶D, as enacted by PL 1987, c. 313, §5, is amended to read:

D. The applicant must have successfully completed an examination given by the American Dietetic Association or its equivalent as determined and administered by the board. The examination requirement of this paragraph shall not apply to an applicant who presents evidence of having practiced as a dietitian without censure for a period of 10 years prior to September 30, 1987.

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

Effective April 1, 1988.

CHAPTER 665

H.P. 1868 — L.D. 2557

AN ACT Relating to the Employment of Minors.

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

Whereas, hiring for the summer employment season will begin within the next few months; and

Whereas, manufacturers and employers in service industries in some parts of the State are facing a labor shortage and would like to employ minors in non-hazardous retail operations; 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. 26 MRSA §773, as amended by PL 1987, c. 401, is further amended by adding at the end a new paragraph to read: