

# 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.

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Twin City Printery  
Lewiston, Maine  
1988

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**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

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B. Release may be unconditional or conditioned upon the juvenile's promise to appear for subsequent official proceedings or, if a juvenile cannot appropriately be released on one of these 2 bases, upon the least onerous of the following conditions, or combination of conditions, necessary to ensure his appearance:

- (1) Upon the written promise of his legal custodian to produce the juvenile for subsequent official proceedings or at any place or time when so ordered by the juvenile caseworker or the Juvenile Court;
- (2) Upon the juvenile's voluntary agreement to placement into the care of a responsible person or organization, including one providing attendant care;
- (3) Upon prescribed conditions, reasonably related to securing the juvenile's presence at subsequent official proceedings or at any place or time when so ordered by the juvenile caseworker or the court, restricting the juvenile's activities, associations, residence or travel; or
- (4) Upon such other prescribed conditions as may be reasonably related to securing the juvenile's presence at subsequent official proceedings or at any place or time when so ordered by the juvenile caseworker or the court.

Upon imposition of any condition of release described in subparagraph (2), (3) or (4), the juvenile caseworker shall provide the juvenile with a copy of the condition imposed and inform the juvenile of the right to have the condition reviewed by the Juvenile Court pursuant to subsection 10 of the consequences applicable to violation of any condition.

Sec. 4. 15 MRSA §3310-A is enacted to read:

§3310-A. Attendant care

Whenever a juvenile who is adjudicated as having committed a juvenile crime is taken into custody as an interim measure pending the completion of a procedure authorized by law to be taken in regard to such juvenile, the juvenile may be placed into attendant care under the same circumstances and upon the same conditions as if the juvenile were one alleged to have committed a juvenile crime.

Effective August 4, 1988.

## CHAPTER 699

S.P. 848 — L.D. 2204

### AN ACT to Protect Elderly, Infirm Persons from Improvident Transfer of Title to Property.

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

Sec. 1. 33 MRSA c. 20 is enacted to read:

## CHAPTER 20

### IMPROVIDENT TRANSFERS OF TITLE

#### §1021. Definitions

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

1. Dependent. "Dependent," with respect to an elderly person, means wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the elderly person:

A. Suffers from a significant limitation in mobility, vision, hearing, emotional or mental functioning or the ability to read or write; or

B. Is suffering or recovering from a major illness or is facing or recovering from major surgery.

2. Elderly person. "Elderly person" means a person who is 60 years of age or older.

3. Independent counsel. "Independent counsel" means an attorney retained by the elderly dependent person to represent only that person's interests in the transfer.

4. Less than full consideration. "Less than full consideration," with respect to a transfer of property, means the transferee pays less than fair market value for the property or the transfer is supported by past consideration.

5. Major transfer of personal property or money. "Major transfer of personal property or money" means a transfer of money or items of personal property which represent 10% or more of the elderly dependent person's estate.

#### §1022. Undue influence

1. Presumption. In any transfer of real estate or major transfer of personal property or money for less than full consideration by an elderly person who is dependent on others to a person with whom the elderly dependent person has a confidential or fiduciary relationship, it shall be presumed that the transfer was the result of undue influence, unless the elderly dependent person was represented in the transfer by independent counsel. When the elderly dependent person successfully raises the presumption of undue influence by a preponderance of the evidence and when the transferee fails to rebut the presumption, the elderly dependent person shall be entitled to avoid the transfer and be entitled to the relief set forth in section 1024.

2. Confidential or fiduciary relationship. For the pur-

pose of this section, the transfer of property is deemed to have been made in the context of a confidential or fiduciary relationship if the transferee had a close relationship with the elderly dependent person prior to the transfer. Confidential or fiduciary relationships include the following:

A. A family relationship between the elderly dependent person and the transferee, including relationships by marriage and adoption;

B. A fiduciary relationship between the elderly dependent person and the transferee, such as with a guardian, conservator, trustee, accountant, broker or financial advisor;

C. A relationship between an elderly dependent person and a physician, nurse or other medical or health care provider;

D. A relationship between the elderly dependent person and a psychologist, social worker or counselor;

E. A relationship between the elderly dependent person and an attorney;

F. A relationship between the elderly dependent person and a priest, minister, rabbi or spiritual advisor;

G. A relationship between the elderly dependent person and a person who provides care or services to that person whether or not care or services are paid for by the elderly person;

H. A relationship between an elderly dependent person and a friend or neighbor; or

I. A relationship between an elderly dependent person and a person sharing the same living quarters.

When any of these relationships exist and when a transfer is made to a corporation or organization primarily on account of the membership, ownership or employment interest of the fiduciary or confidante, a fiduciary or confidential relationship with the corporation or organization is deemed to exist.

#### §1023. Civil action; relief available

1. Civil action. A civil action may be brought to obtain relief under this chapter.

2. Relief available; protected transfers. When a court finds that a transfer of property was the result of undue influence, it shall grant appropriate relief enabling the elderly dependent person to avoid the transfer, including the rescission or reformation of a deed or other instrument, the imposition of a constructive trust on property or an order enjoining use of or entry on property or commanding the return of property. When the court finds that undue influence is a good and valid defense to a transferee's suit on a contract to transfer the property, the court shall refuse to enforce the transfer.

No relief obtained or granted under this section may in any way affect or limit the rights of good faith purchasers, mortgagees, holders of security interests or other 3rd parties who obtain an interest in the transferred property for value after its transfer from the elderly dependent person. No relief obtained or granted under this section may affect any mortgage deed to the extent of value given by the mortgagee.

3. Statute of limitations. The limitations imposed by Title 14, section 752, apply to all actions brought under this chapter.

#### §1024. Other common law and statutory causes of action and relief still available

Nothing in this chapter may be construed to abrogate any other causes of action or relief at law or equity to which elderly dependent persons are entitled under other laws or at common law.

**Sec. 2. Application.** This Act shall apply only to transfers of property that occur on or after the effective date of this Act.

Effective August 4, 1988.

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## CHAPTER 700

S.P. 971 — L.D. 2579

### AN ACT to Establish Operating Permits for Commercial Dairy Farms.

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

**Sec. 1.** 7 MRSA §2901, sub-§1-C is enacted to read:

1-C. Commercial dairy farm. Commercial dairy farm means any farm the operator of which sells milk from the farm to a milk dealer.

**Sec. 2.** 7 MRSA §2902-A is enacted to read:

#### §2902-A. Operating permits

1. Sale prohibited. Following the adoption of and in accordance with rules established according to this section, no operator of a commercial dairy farm may sell any milk to a milk dealer, unless the operator holds a valid operating permit for the farm issued by the commissioner.

2. Issuance of operating permits. The commissioner, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, shall adopt rules for the issuance of operating permits. These rules shall establish permitting procedures and standards for permit issuance. In establishing these procedures and standards, the commissioner shall seek consistency with applicable