

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
**FIRST SPECIAL SESSION**

August 21, 1989 to August 22, 1989

and

**SECOND REGULAR SESSION**

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
July 14, 1990

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

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J.S. McCarthy Company  
Augusta, Maine  
1990

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FOURTEENTH LEGISLATURE**

**January 3, 1990 to April 14, 1990**

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1990-91

## ADMINISTRATION, DEPARTMENT OF

## Risk Management Division

Positions	(1)
Personal Services	\$19,448
All Other	1,500
Capital Expenditures	1,352

Authorizes position of Assistant Risk Assessor.

DEPARTMENT OF ADMINISTRATION  
TOTAL \$22,300

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect on July 1, 1990, unless otherwise indicated.

Effective July 1, 1990, unless otherwise indicated.

## CHAPTER 858

H.P. 1754 - L.D. 2417

## An Act to Improve Protective Services for Incapacitated and Dependent Adults

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

**Sec. 1.** 4 MRSA §807, sub-§3, ¶H, as enacted by PL 1989, c. 265, §1 and as repealed and replaced by PL 1989, c. 755, is repealed and the following enacted in its place:

H. A person who is not an attorney, but has been designated to represent either the Department of Human Services, under Title 22, section 3473, subsection 3, or the Department of Mental Health and Mental Retardation, under Title 34-B, section 1204, subsection 7, in Probate Court proceedings.

**Sec. 2.** 18-A MRSA §5-303, sub-§(e) is enacted to read:

(e) When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.

**Sec. 3.** 18-A MRSA §5-407, sub-§(e) is enacted to read:

(e) When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the

court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.

**Sec. 4.** 22 MRSA §3472, sub-§5, as amended by PL 1989, c. 329, §4, is further amended to read:

**5. Department.** "Department" means either the Department of Human Services through its Bureau of Elder and Adult Services or, in the case of mentally retarded adults, the ~~Commissioner~~ Department of Mental Health and Mental Retardation.

**Sec. 5.** 22 MRSA §3473, sub-§3 is enacted to read:

**3. Appearance of designated employees in Probate Court.** The commissioner may designate employees of the department to represent the department in Probate Court in:

A. Matters relating to the performance of duties in uncontested guardianship proceedings; and

B. Requests for emergency guardianships arising from the need for emergency medical treatment.

**Sec. 6.** 22 MRSA §3474, sub-§2, ¶F, as amended by PL 1987, c. 714, §3, is further amended to read:

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or ~~his~~ the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent ~~shall~~ must be obtained by the department prior to the contact; ~~and~~

**Sec. 7.** 22 MRSA §3474, sub-§2, ¶G, as enacted by PL 1987, c. 714, §4, is amended to read:

G. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857-; and

**Sec. 8.** 22 MRSA §3474, sub-§2, ¶H is enacted to read:

H. A relative by blood, marriage or adoption of an incapacitated or dependent adult named in a record.

**Sec. 9.** 22 MRSA §3474, sub-§3, ¶C, as amended by PL 1985, c. 644, §2, is further amended to read:

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; ~~and~~

**Sec. 10.** 22 MRSA §3474, sub-§3, ¶D, as amended by PL 1989, c. 7, Pt. N, §2, is further amended to read:

D. An advocacy agency conducting an investigation under chapter 961, United States Public Law 88-164, Title I, Part C or United States Public Law 99-319, regarding a developmentally disabled person or mentally ill person who is or who, within the last 90 days, was residing in a facility rendering care or treatment, when a complaint has been received by the agency or there is probable cause to believe that that individual has been subject to abuse or neglect, and that person does not have a legal guardian or the person is under public guardianship. The determination of ~~what~~ which information and records are relevant to the investigation ~~shall~~ be is made by agreement between the department and the agency; and

**Sec. 11. 22 MRSA §3477, sub-§1**, as amended by PL 1989, c. 259, §6, is further amended to read:

**1. Reasonable cause to suspect.** When, while acting in a professional capacity, an allopathic or osteopathic physician, medical intern, medical examiner, physician's assistant, dentist, chiropractor, podiatrist, registered or licensed practical nurse, certified nursing assistant, Christian Science practitioner, social worker, psychologist, pharmacist, physical therapist, speech therapist, occupational therapist, mental health professional, law enforcement official, coroner, emergency room personnel, ambulance attendant or emergency medical technician suspects that an adult has been abused, neglected or exploited, and has reasonable cause to suspect that the adult is incapacitated, then the professional shall immediately report or cause a report to be made to the department.

Whenever a person is required to report in the capacity as a member of the staff of a medical, public or private institution, agency or facility, the staff person shall immediately notify the person in charge of the institution, agency or facility, or the designated agent of the person in charge, who shall then cause a report to be made. The staff person shall also make a report directly to the department.

**Sec. 12. 22 MRSA §3479**, as amended by PL 1983, c. 616, §2, is repealed and the following enacted in its place:

**§3479. Optional reporting**

Any person may make a report if that person knows or has reasonable cause to suspect abuse, neglect or exploitation of an incapacitated or dependent adult, or has reasonable cause to suspect that an adult is incapacitated.

See title page for effective date.

## CHAPTER 859

H.P. 1757 - L.D. 2434

### An Act to Amend the Laws Concerning the Theft of Blueberries

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

**Sec. 1. 36 MRSA §4315, sub-§1**, as enacted by PL 1989, c. 214, §2, is amended to read:

**1. Transportation of blueberries without permit.** It is unlawful for any person to transport blueberries in quantities exceeding 25 pounds without first obtaining a transportation permit on an official form to be furnished by the Maine Blueberry Commission. The Maine Blueberry Commission shall issue official transportation permit forms to owners who may issue the transportation permits to individuals. Each permit issued ~~shall~~ must bear a different number and ~~shall~~ expire at the end of the calendar year. When an owner issues a transportation permit, the owner shall immediately send a copy to the Maine Blueberry Commission. The commission shall keep a permanent record of all permits issued. The commission may promulgate rules establishing the form and content of transportation permits and governing the means of their issuance and establishing the record-keeping functions of the commission and the owners. Notwithstanding any provision of Title 1, chapter 13, subchapter I to the contrary, records pertaining to transportation permits required to be kept by the Maine Blueberry Commission under this section are confidential to the extent necessary to preserve the identity of parties to individual business transactions. The confidential status does not apply when records kept by the Maine Blueberry Commission are needed as evidence in any proceeding to enforce any provision of section 4314 or this section, or in any prosecution for a violation of any other criminal law.

**Sec. 2. 36 MRSA §4316, sub-§3**, as enacted by PL 1989, c. 214, §2, is amended to read:

**3. Violation.** The failure to keep the permanent records of blueberries received as required in this section ~~or~~ failure to inspect the transportation permit of a driver of a vehicle used to deliver blueberries or any other violation of this section is a civil violation punishable by a fine of not more than \$1,000.

**Sec. 3. 36 MRSA §4316, sub-§4**, as enacted by PL 1989, c. 214, §2, is repealed and the following enacted in its place:

**4. Audits.** The Maine Blueberry Commission may request the Department of Agriculture, Food and Rural Resources to conduct audits of the records of receivers for the purpose of ascertaining compliance with this section. The commissioner, or a duly authorized agent, has free access, during normal business hours, to all