

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
OCTOBER 9, 1991

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  
1991

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

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**

**1991**

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the public hearing to the clerk of each municipality in the county. The municipal clerk shall notify the elected officials of the proposed budget.

**Sec. 7. 30-A MRSA §864, sub-§4**, as enacted by PL 1989, c. 473, is amended to read:

**4. Approval of budget.** ~~After the public hearing is completed, the advisory budget committee may further increase, decrease, alter and revise the proposed itemized budget shall submit its recommendations to the county commissioners for approval not later than the end of the county's fiscal year, subject to the conditions and restrictions imposed in subsection 2. The proposed itemized budget must be finally adopted by a majority vote of the budget committee at a duly called meeting not later than the end of the county's fiscal year. The approved budget is the final authorization for the assessment of county taxes. The budget shall be sent to the county commissioners and the county tax authorized shall be apportioned and collected in accordance with section 706.~~

**Sec. 8. 30-A MRSA §864, sub-§4-A** is enacted to read:

**4-A. Legislative approval.** Before January 15th of the fiscal year for which the budget is prepared, the county commissioners shall submit the budget to the Legislature. The Legislature shall approve, disapprove or amend the budget as submitted.

**Sec. 9. 30-A MRSA §§865 and 867**, as enacted by PL 1989, c. 473, are repealed.

**Sec. 10. Retroactivity.** This Act applies retroactively to February 28, 1991.

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

Effective July 8, 1991.

## CHAPTER 534

H.P. 825 - L.D. 1179

### An Act to Amend the Laws Regarding Complaints against Physicians

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

Whereas, there are numerous patient complaints and suits regarding physician services; and

Whereas, it is felt that providing potential patients with additional information regarding physicians as an aid to selecting and dealing with them would be one means to a more satisfactory physician-patient relationship; and

Whereas, some of the information that would be of aid to a patient appears to be protected by current federal and state laws; and

Whereas, it is desirable that these issues of what information may be legally made available be clarified as soon as possible so that patients may be provided with all information not legally prohibited; 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. 24 MRSA §2509, sub-§6**, as enacted by PL 1977, c. 492, §3, is amended to read:

**6. Court action for amendment or destruction.** ~~A physician shall have~~ has the right to seek through court action pursuant to the Maine Rules of Civil Procedure the amendment or destruction of any part of ~~his~~ that physician's historical record in the possession of the board. When a physician initiates court action under this subsection, the board shall notify the persons who have filed complaints of the physician's request to amend these complaints or expunge them from the record. Notice to complainants must be sent to the last known address of the complainants. The notice must contain the name and address of the court to which a complainant may respond, the specific change in the complaint that the physician is seeking or the complaint that the physician seeks to expunge, and the length of time that the complainant has to respond to the court. The board shall provide complainants with at least 60 days' notice from the date the notice is sent in which to respond.

**Sec. 2. 24 MRSA §2509, sub-§7**, as enacted by PL 1977, c. 492, §3, is repealed and the following enacted in its place:

**7. Destruction of information.** A board, subject to this section, may not amend or expunge any information from a physician's historical record that concerns complaints filed against the physician or disciplinary action taken by the board with respect to that physician unless the board is provided with evidence more probable than not that the complaint may be dismissed for lack of merit or does not raise to a level of misconduct sufficient to merit board action. If there is insufficient evidence to prove or disprove a complaint filed with the board, the historical record must indicate that evidence was insufficient to support disciplinary action.

**Sec. 3. 24 MRSA §2601, first ¶**, as enacted by PL 1977, c. 492, §3, is amended to read:

Every insurer providing professional liability insurance in this State to a person licensed by the Board of

Registration in Medicine or the Board of Osteopathic Examination and Registration or to any health care provider shall make a periodic report of claims made under the insurance to the department or board that regulates the insured and to the Attorney General. For purposes of this section, a claim is made whenever the insurer receives information from an insured, a patient of an insured or an attorney that an insured's liability for malpractice is asserted. The report ~~shall~~ must include:

**Sec. 4. 24 MRSA §2602, sub-§1**, as amended by PL 1979, c. 541, Pt. A, §161, is further amended to read:

**1. Report; finality of judgment or award.** If The insurer shall make a report of disposition to the board or department that regulates the insured and to the Attorney General as provided in subsection 2 if any claim subject to section 2601 results in:

- A. A final judgment or award to the claimant in any amount;
- B. A settlement involving payment in any amount of money or services; or
- C. A final disposition not involving any payment of money or services, ~~the insurer shall make a report of disposition as provided in subsection 2.~~

For purposes of this subsection, a judgment or award is final when it ~~cannot~~ can not be appealed, and a disposition is final when it results from judgment, dismissal, withdrawal or abandonment.

**Sec. 5. 24 MRSA §2607**, as enacted by PL 1985, c. 804, §10, is amended to read:

**§2607. Claims paid information**

When 3 notices of professional liability claims are made within a 10-year period regarding any person licensed by the Board of Registration in Medicine or the Board of Osteopathic Examination and Registration ~~has 3 professional liability claims that have resulted in a monetary judgment, award or settlement over a 10-year period; and one or more of the claims, following an initial review, potentially may rise to a level of misconduct sufficient to merit board action.~~ the board shall treat that situation as a complaint against the licensee or practitioner and shall initiate a review consistent with Title 32, sections 3282 to 3289. Any claims that lack merit or fail to rise to a level of board action may be dismissed by the board for the purpose of this section.

**Sec. 6. 32 MRSA §2592-A** is enacted to read:

**§2592-A. Reporting and investigation of complaints**

When an action is taken against a licensee and the licensee moves or has moved to another state, the board

may report to the appropriate licensing board in that state the complaint that has been filed, any other complaints in the physician's record on which action was taken and any disciplinary actions of the board with respect to that physician.

When a person applies for a license under this chapter, the board may investigate the professional record of that person, including any professional records that the person may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

**Sec. 7. 32 MRSA §3282-A, sub-§1**, as enacted by PL 1983, c. 378, §53, is amended to read:

**1. Disciplinary proceedings and sanctions.** The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of any rules adopted by the board.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but in no event later than within 60 days of receipt of this information. The licensee shall respond within 30 days. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and it is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference ~~shall~~ must be conducted in executive session of the board, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, any other complaints in the physician's record on which action was taken and any disciplinary actions of the board with respect to that physician.

When a person applies for a license under this chapter, the board may investigate the professional record of that person, including any professional records that the person may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

If the board finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it deems appropriate:

A. With the consent of the licensee, enter into a consent agreement ~~which~~ that fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office;

B. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement, ~~which~~ that ensure protection of the public health and safety and ~~which~~ serve to rehabilitate or educate the licensee. These stipulations ~~shall~~ may be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office;

C. If the board concludes that modification or nonrenewal of the license might be in order, the board shall hold an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV; or

D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the Administrative Court in accordance with Title 4, chapter 25.

The board shall require a licensee to notify all patients of the licensee of any probation or stipulation under which the licensee is practicing as a result of board disciplinary action. This requirement does not apply to any physician participating in an alcohol or drug treatment program pursuant to Title 24, section 2505, any physician who retires following charges made or complaints investigated by the board or any physician under the care of a professional and whose medical practices and services are not reduced, restricted or prohibited by the disciplinary action.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect on September 15, 1991.

Effective September 15, 1991.

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## CHAPTER 535

H.P. 662 - L.D. 941

### An Act to Amend the Requirement that Contracts Be in Writing

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

10 MRSA c. 202-B is enacted to read:

#### CHAPTER 202-B

#### COMMERCIAL LOAN AGREEMENTS

#### §1146. Writing required for commercial loans

**1. Writing and signature required.** A borrower may not maintain an action upon any agreement to lend money, extend credit, forbear from collection of a debt or make any other accommodation for the repayment of a debt for more than \$250,000 unless the promise, contract or agreement on which the action is brought, or some memorandum or note of the promise, contract or agreement, is:

A. In writing; and

B. Signed by the party to be charged with the promise, contract or agreement, or by some person lawfully authorized to sign for the party to be charged.

**2. Notice.** Subsection 1 does not apply if the person to be charged with the promise, contract or agreement failed to notify the borrower that the promise, contract or agreement must be in writing for an action to be maintained.

**3. Application.** This section applies only to promises, contracts and agreements entered into after the effective date of this section.

See title page for effective date.

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## CHAPTER 536

H.P. 1057 - L.D. 1546

### An Act to Amend the Unfair Trade Practices Act to Allow Consumers to Recover Damages

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

**Sec. 1. 5 MRSA §213, sub-§1,** as amended by PL 1983, c. 29, §2, is further amended to read:

**1. Court action.** Any person who purchases or leases goods, services or property, real or personal, primarily for personal, family or household purposes and thereby suffers any loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 207 or by any rule or regulation issued under section 207, subsection 2 may bring an action either in the Superior Court or District Court for actual damages, restitution and for such other equitable relief, including an injunction, as the court ~~may deem~~ determines to be necessary and proper. There ~~shall~~ be a right to trial by jury in any action brought in Superior Court under this section.

**Sec. 2. 5 MRSA §213, sub-§1-A** is enacted to read:

**1-A. Settlement offer.** At least 30 days prior to the filing of an action for damages, a written demand for relief,