

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

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J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS
OF THE
STATE OF MAINE

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1991

this section and the penalties for providing alcohol to a minor. The seller shall retain the form as a record subject to chapter 31.

C. The seller of the keg shall require positive identification of the purchaser.

D. The seller of the keg may require a deposit of up to \$50 from the purchaser of the keg, regardless of the size of the keg. The seller shall refund the deposit to a person who returns a properly tagged keg purchased from that seller.

E. The seller shall inform the purchaser that if the keg is returned without the original numbered band intact, the deposit is forfeited.

F. The seller may retain any deposit forfeited and use the funds forfeited for local school-based alcohol education programs or for any other purpose.

4. Civil violation; possession of unlabeled keg. In addition to any other penalties imposed by law, a person possessing an unlabeled keg purchased in this State after the effective date of this section commits a civil violation for which a forfeiture of \$500 must be adjudged.

5. Criminal penalty; removal or defacing of tag. A person commits defacing or removal of a malt liquor keg tag if that person defaces or removes from a keg a tag required by this section. Defacing or removal of a malt liquor keg tag is a Class E crime. If a person who purchased a properly tagged keg returns the keg without a tag or with a defaced tag, that person is presumed to have removed or defaced the tag.

See title page for effective date.

CHAPTER 544

H.P. 635 - L.D. 905

An Act to Amend the Child Labor Laws and to Allow Illegally Employed Minors to Bring Suit Against Their Employers for Work Related Injuries

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

Sec. 1. 26 MRSA §664, last ¶, as amended by PL 1969, c. 504, §43, is further amended to read:

Employees who are under the age of 19 and are regularly enrolled in an educational institution or are on vacation therefrom may be paid a rate of not less than ~~75%~~ 85% of the applicable minimum wage rate required for other employees in the same occupation.

Sec. 2. 26 MRSA §702, as amended by PL 1979, c. 468, §1, is further amended to read:

§702. Record of work hours of minors under 16 years of age

Every employer shall keep a time book or record for every minor under ~~16~~ 18 years of age employed in any occupation, except the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, or household work, stating the number of hours worked by each minor under ~~16~~ 18 years of age on each day of the week. ~~Such~~ ~~The~~ time book or record ~~shall~~ ~~must~~ be open at all reasonable hours to the inspection of the director, a director's deputy or any authorized agent of the bureau. Any employer who fails to keep the record required by this section or makes any false entry ~~therein~~ to the record, or refuses to exhibit the time book or record or makes any false statement to the director, a director's deputy or any authorized agent of the bureau in reply to any question in carrying out section 701 and this section ~~shall be~~ is liable for a violation ~~thereof~~ of this section and section 701.

Sec. 3. 26 MRSA §704, as amended by PL 1981, c. 698, §115, is repealed and the following enacted in its place:

§704. Penalty for employers

1. Strict liability. An employer who violates either section 701 or 702 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture of not less than \$50 nor more than \$250;

B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture of not less than \$100 nor more than \$1,000; or

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a forfeiture or penalty of not less than \$250 nor more than \$2,500.

2. Adjudications. As used in this section, a prior adjudication includes a consent decree that contains an admission of a violation. The dates of prior adjudications for any violation of sections 701 and 702 or a combination must precede the commission of the violation being enhanced, although prior adjudications involving a combination may have occurred on the same day. The date of any adjudication is the date the forfeiture or penalty is adjudged or the consent decree allowed, even though an appeal was taken.

Sec. 4. 26 MRSA §771, as amended by PL 1979, c. 468, §2, is further amended to read:

§771. Minors under 14 years of age

~~No child~~ A minor under 14 years of age ~~shall may~~ not be employed, permitted or suffered to work in, about or in connection with agriculture, except for the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, any eating place, automatic laundries, retail establishment where frozen dairy products are manufactured on the premises, sporting or overnight camp, mercantile establishment or in outdoor occupations on the grounds of a hotel, and ~~no child~~ a minor between the ages of 14 and 16 years ~~shall may~~ not be so employed when the distance between the work place and the home of the ~~child~~ minor, or any other factor, necessitates the ~~child's~~ minor's remaining away from home overnight. ~~Except as otherwise provided, no child under 15 years of age shall be employed, permitted or suffered to work at any business or service for hire, whatever, during the hours that the public schools of the town or city in which he resides are in session. This section shall does not apply to any such child minor who is employed directly by, with or under the supervision of either or both of its the minor's parents; or to any such child minor employed in school lunch programs, if limited to serving food and cleaning up dining rooms.~~

Sec. 5. 26 MRSA §§774 and 775, as amended by PL 1989, c. 700, Pt. A, §§102 and 103, are repealed and the following enacted in their place:

§774. Hours of employment

1. Minors under 18 years of age. A minor under 18 years of age, enrolled in school, may not be employed as follows:

A. More than 48 hours in any week when school is not in session;

B. More than 20 hours in any week when school is in session;

C. More than 8 hours in any day when school is not in session;

D. More than 4 hours in any day when school is in session;

E. More than 6 consecutive days; or

F. Between the hours of 10 p.m. and 7 a.m. on a day preceding a school day or between the hours of 12 a.m. and 7 a.m. on a day that does not precede a school day.

2. Minors under 16 years of age. A minor under 16 years of age may not be employed as follows:

A. More than 40 hours in any week when school is not in session;

B. More than 18 hours in any week when school is in session;

C. More than 8 hours in any day when school is not in session;

D. More than 3 hours in any day when school is in session;

E. More than 6 consecutive days; or

F. Between the hours of 7 p.m. and 7 a.m. in any day when school is in session or between the hours of 9 p.m. and 7 a.m. during summer school vacation.

3. Employment during hours school in session. A minor under 17 years of age may not be employed during the hours that the public schools of the town or city in which the minor resides are in session.

A. This subsection does not apply to:

(1) A minor who has been excused from attendance by school officials in accordance with Title 20-A, section 5001-A, subsection 2 or subsection 3, except that a minor who has been excused in accordance with subsection 3 may not be employed during the hours that the minor's school is in session;

(2) A student in an alternative education plan that includes a work experience component;

(3) A student in an approved vocational cooperative education program; or

(4) A student who is granted permission for an early school release by the school principal.

The hours worked by a student in an alternative education plan or in an approved vocational cooperative education program may not be included in determining the student's total hours of permitted employment under subsection 1 and subsection 2.

4. Exemptions. Work performed in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances or any occupation that does not offer continuous, year-round employment is exempt from this section, provided a minor under 16 years of age has been excused by the local superintendent of schools in accordance with the policy established by the Commissioner of Education and the Director of the Bureau of Labor. Work performed in the taking or catching of lobsters, fish or other marine organisms by any methods or means, or in

the operating of ferries or excursion boats, is exempt from subsection 1, paragraphs A and C.

§775. Work permits

1. Work permit authority. A minor under 16 years of age may not be employed without a work permit issued to the minor by the superintendent of schools of the school administrative unit in which the minor resides. The superintendent may designate a school official to issue a work permit and that official is directly responsible to the superintendent for this activity.

2. Conditions for issuance. The superintendent shall issue a permit in the following circumstances:

A. If the school is in session or the minor is attending summer school, the minor must be enrolled in school, not habitually truant, not under suspension and passing a majority of courses during the current grading period. Upon request of the minor, the superintendent may waive the requirements for one grading period if, in the opinion of the superintendent, there are extenuating circumstances or if imposing the requirements would create an undue hardship for the minor;

B. If school is not in session, the minor must furnish to the superintendent a certificate signed by the principal of the school last attended showing that the minor has satisfactorily completed kindergarten to grade 8 in the public schools or their equivalent. If the certificate can not be obtained, the superintendent shall examine the minor to determine whether the minor meets these educational standards; or

C. If the minor has been granted an exception to compulsory education under Title 20-A, section 5001-A, subsection 2, the minor must only submit proof of age as provided in subsection 3.

3. Proof of age. The superintendent may issue a permit only upon receiving and examining satisfactory evidence of the minor's age. Satisfactory evidence consists of a certified copy of the minor's birth certificate or baptismal record, a passport showing the date of birth or other documentary evidence of age satisfactory to the superintendent and approved by the director. The superintendent may require, in doubtful cases, a certificate signed by a physician appointed by the school board, stating that the minor has been examined and, in that physician's opinion, has reached the normal development of a minor of the same age and is in sufficiently sound health and physically able to perform the work the minor intends to do.

4. Conditions for revocation. The superintendent may revoke the work permit issued to a minor if the superintendent determines that the minor has not maintained the conditions for issuance of the work permit under subsection 2, paragraph A. The superintendent shall notify the

Director of the Bureau of Labor Standards and the minor's employer in writing upon revoking a minor's work permit. The revocation is effective upon receipt by the employer of the superintendent's notice.

5. Permit on file. The employer shall keep all work permits issued for the employer's minor employees on file and accessible to any attendance officer, factory inspector or other authorized officer charged with the enforcement of this subchapter.

6. Exception. This section does not apply to minors engaged in work performed in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, household work or any occupation that does not offer continuous, year-round employment.

Sec. 6. 26 MRSA §776 is repealed.

Sec. 7. 26 MRSA §777, as amended by PL 1971, c. 620, §13, is further amended to read:

§777. Blanks furnished; filing of triplicate permits; surrender and cancellation of permits

The blank work permit and other papers required by sections ~~section 775 and 776~~ shall must be formulated by the director and furnished by ~~him~~ the director to the persons authorized to issue work permits. The forms of such permits and other papers shall must be approved by the Attorney General. Every work permit and every vacation permit shall must be made out in duplicate triplicate. All duplicates triplicates, accompanied by the original papers on which such permits were issued, shall must be forwarded to the bureau by the officer issuing ~~same~~ the permits, within 24 hours of the time that ~~said~~ the permit was issued. ~~Said~~ The bureau shall examine such papers and promptly return them to the officer who sent ~~the~~ them after validating the copies and retaining one copy for bureau files. ~~Such~~ The officer may ~~thereupon~~ then return to the minor all papers with ~~him~~ filed in proof of age. Whenever there is reason to believe that a work permit was improperly issued, the director, ~~his~~ deputy director or agent shall notify the local superintendent of schools of the place in which such certificate was issued. The local superintendent shall cancel such permit when directed to do so by the director.

Sec. 8. 26 MRSA §778, as amended by PL 1971, c. 620, §13, is repealed.

Sec. 9. 26 MRSA §780 is amended to read:

§780. Work permit conclusive for employer; documentary evidence of age

A work permit in regular form signed by a duly authorized officer, for all minors under 16 years of age,

~~shall be~~ is conclusive evidence of age and educational attainment, in behalf of the employer of any ~~child~~ minor, upon any prosecution for violation of the law relating to the employment of ~~children~~ minors. An inspector of factories, attendance officer or other officer charged with the enforcement of this subchapter may make demand on any employer in or about whose place or establishment a minor apparently under the age of 16 years is employed, permitted or suffered to work, that such employer shall either furnish ~~him~~ the inspector within 10 days documentary evidence of age as specified in section 775, or shall cease to employ, permit or suffer such ~~child~~ minor to work in such place or establishment.

Sec. 10. 26 MRSA §781, as amended by PL 1989, c. 415, §33, is repealed and the following enacted in its place:

§781. Penalties

1. Strict liability. An employer who employs, permits or suffers any minor to be employed or to work in violation of this article or Title 20-A, section 5054 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than \$250 nor more than \$5,000;

B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture or penalty of not less than \$500 nor more than \$5,000; or

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudication, a penalty of not less than \$2,000 nor more than \$10,000.

2. Intentional or knowing violation of section 771, 772, or 773. An employer who intentionally or knowingly employs, permits or suffers any minor to be employed or to work in violation of section 771, 772 or 773 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than \$500;

B. For a 2nd violation occurring within 3 years of a prior adjudication, a penalty of not less than \$5,000 nor more than \$20,000; or

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a penalty of not less than \$10,000 nor more than \$50,000.

3. Adjudications. As used in this section, a prior adjudication includes a consent decree that contains an ad-

mission of a violation. The dates of prior adjudications for any violation or a combination of violations must precede the commission of the violation being enhanced, although prior adjudications involving a combination may have occurred on the same day. The date of any adjudication is the date the forfeiture or penalty is adjudged or the consent decree allowed, even though an appeal was taken.

Sec. 11. 39 MRSA §4, first ¶, as amended by PL 1985, c. 737, Pt. A, §117, is further amended to read:

An employer who has secured the payment of compensation in ~~conformity~~ conformity with sections 21-A to 27 is exempt from civil actions, either at common law or under sections 141 to 148, Title 14, sections 8101 to 8118, and Title 18-A, section 2-804, involving personal injuries sustained by an employee arising out of and in the course of ~~his~~ employment, or for death resulting from those injuries. ~~This exemption~~ These exemptions from liability ~~applies~~ apply to all employees, supervisors, officers and directors of the employer for any personal injuries arising out of and in the course of employment, or for death resulting from those injuries. These exemptions also apply to occupational diseases sustained by an employee or for death resulting from those diseases. These exemptions do not apply to an illegally employed minor as described in section 28-A, subsection 2.

Sec. 12. 39 MRSA §28, as amended by PL 1989, c. 502, Pt. A, §149, is repealed.

Sec. 13. 39 MRSA §28-A is enacted to read:

§28-A. Waiver of right of action; minors

Except as provided in subsection 2, an employee of an employer who has secured the payment of compensation as provided in sections 21-A to 27 is deemed to have waived the employee's right of action at common law and under section 4 to recover damages for the injuries sustained by the employee.

1. Legally employed minors. A minor is deemed sui juris for the purpose of this Act if the minor's employer was not in violation of Title 26, section 771, 772 or 773 at the time of the minor's injury. No other person has any cause of action or right to compensation for an injury to that minor employee except as expressly provided.

2. Illegally employed minors. A minor is not deemed to have waived the minor's right of action at common law and under section 4 if the minor's employer was in violation of Title 26, section 771, 772 or 773 at the time of the minor's injury.

A. The minor employee, the minor's parent or guardian or any other person, as permitted by common law or statute, may file a civil action permitted under this subsection.

B. The minor employee is entitled to compensation under this Act in addition to any right of action permitted under this subsection.

C. If the employer is self-insured for liability under this Act, any award received by the minor in an action permitted under this subsection must be reduced by the amount of compensation received under this Act.

D. If the employer is insured for liability under this Act, the employer is considered a 3rd party under section 68, and the employer's insurer is entitled to all rights of subrogation, contribution or other rights granted to an employer under section 68.

Sec. 14. Application. Sections 11, 12 and 13 apply only to injuries occurring on or after the effective date of this Act.

Sec. 15. Posting of notice. Notwithstanding the Maine Revised Statutes, Title 26, section 701, the Bureau of Labor is not required to modify and redistribute the printed notice required by that section to reflect the changes in the law resulting from this Act. The Bureau of Labor shall modify the printed notice to reflect the changes contained in this Act when it becomes necessary, due to an insufficient supply of such notices or future changes in the law, to print additional notices.

See title page for effective date.

CHAPTER 545

S.P. 374 - L.D. 999

An Act to Establish the Maine Primary Care Residency Training Assistance Program

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

Whereas, it is critical that the Primary Care Residency Commission begin its work as soon as possible; 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. 5 MRSA §12004-I, sub-§29-A is enacted to read:

<u>29-A.</u>	<u>Primary Care</u>	<u>Expenses</u>	<u>10 MRSA</u>
<u>Finance</u>	<u>Residency Ad-</u>	<u>Only</u>	<u>§1100-X</u>
	<u>visory Com-</u>		
	<u>mittee</u>		

Sec. 2. 10 MRSA c. 110, sub-c. X is enacted to read:

SUBCHAPTER X

MEDICAL TRAINING ASSISTANCE

§1100-U. Definitions

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

1. Primary care physician. "Primary care physician" means the physician a patient contacts for continuous general medical care.

2. Primary care residency program. "Primary care residency program" means a graduate medical education program in family practice, obstetrics and gynecology, internal medicine or pediatrics approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association.

3. Residency. "Residency" means the supervised post doctoral training experience that follows medical school, the completion of which qualifies a person to take the examinations necessary for eligibility in that person's specialty.

§1100-V. Authorization; Maine Primary Care Residency Training Assistance Program

The Finance Authority of Maine shall administer the Maine Primary Care Residency Training Assistance Program if funds are available. This program is a statewide program to make grants to improve the quality of training and expand the number of primary care residents in this State pursuant to contracts between the authority and the approved primary care residency programs.

§1100-W. Administration

1. Contracts. The Finance Authority of Maine shall contract with each approved primary care residency program that seeks to participate in the Maine Primary Care Residency Training Assistance Program. Contracts must allocate grants based upon a formula approved by the authority related to the total number of resident physicians in all 3 years of training programs and the number of the first-year residents in training programs in internal medicine, obstetrics and gynecology and pediatrics. The contracts must provide terms and conditions as may be necessary to ensure that funds provided under this subchapter supplement and not supplant funds currently available for such programs.