

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

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

J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

CHAPTER 636

H.P. 1420 - L.D. 2032

An Act to Repeal the Provisions of the Uniform Commercial Code Relating to Bulk Transfers

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

Sec. 1. 11 MRSA §1-105, sub-§(2), as amended by PL 1977, c. 696, §117, is further amended to read:

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the Article on Bank Deposits and Collections. Section 4-102.

~~Bulk transfers subject to the Article on Bulk Transfers. Section 6-102.~~

Applicability of the Article on Investment Securities. Section 8-106.

Perfection provisions of the Article on Secured Transactions. Section 9-103.

Sec. 2. 11 MRSA §2-403, sub-§(4) is amended to read:

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on secured transactions (Article 9), ~~bulk transfers (Article 6)~~ and documents of title (Article 7).

Sec. 3. 11 MRSA Art. 6, as amended, is repealed.

Sec. 4. 11 MRSA §9-111 is repealed.

Sec. 5. Savings clause. This Act does not apply to any rights and obligations that may be in effect under the Maine Revised Statutes, Title 11, Article 6 and section 9-111 on the effective date of this Act.

See title page for effective date.

CHAPTER 637

S.P. 590 - L.D. 1562

An Act Providing Nursing and Boarding Home Residents with a Right of Action for Violations of Their Resident Rights

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

Whereas, public advocacy services for residents of long-term care facilities have been severely diminished; and

Whereas, those residents must be given private means to address their grievances 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. 22 MRSA §7946, sub-§5, as enacted by PL 1987, c. 774, §4, is repealed.

Sec. 2. 22 MRSA §§7948 and 7949 are enacted to read:

§7948. Right of action

1. Generally. Any resident whose rights have been violated as described in this section may commence a civil action in the Superior Court on that resident's own behalf for injunctive and declaratory relief against any long-term care facility that is alleged to be in violation of any rule described in section 7924 or in violation of the rights enumerated in 42 United States Code, Section 1396r, Subsection (c). In order to grant a preliminary or permanent injunction under this section, the Superior Court must find that:

A. The plaintiff will suffer irreparable injury if the injunction is not granted;

B. The irreparable injury outweighs any harm that granting the injunctive relief would inflict on the defendant;

C. The plaintiff has exhibited a likelihood of success on the merits of the case; and

D. The public interest will not be adversely affected by granting the injunction.

2. Right of action limited. An action may not be commenced under this section until 15 days after the resident has given notice of the violation and an intention to bring suit under this chapter to the commissioner, the Attorney General and each party alleged to be violating the law or rule. The court may waive the 15-day notice requirement and issue a temporary restraining order when the plaintiff shows that the alleged violation presents an immediate threat to the plaintiff's health or safety.

3. Parties may intervene. In any action brought by the Attorney General or the commissioner under this chapter, any resident who has a right of action under this section may intervene if that resident has a direct interest that is or may be adversely affected by the action and the disposition of the action may impair or impede the resident's ability to protect that interest. The Attorney General and the commissioner may intervene in any action brought by a resident under this section. This subsection does not affect the ability of any party to take action under Title 5, section 9054.

4. Service. A copy of the complaint and other pleadings must be delivered to the commissioner and the Attorney General at the time of service on the defendant. Copies of all answers and other documents accompanying the answers must be delivered to the commissioner and the Attorney General at the time of service on the plaintiff.

5. Dismissal of action. The court may, on the motion of any party or on its own motion, dismiss any action brought under this section that alleges a de minimis violation of section 7924 or of 42 United States Code, Section 1396r, Subsection (c).

§7949. No limitation on right of action

The remedies provided under section 7948 are in addition to those otherwise available under state or federal law and may not be construed as limiting any other remedies including any remedy available to an individual at common law. Exhaustion of any available administrative remedy is not required prior to commencement of an action under this section.

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

Effective February 28, 1992.

CHAPTER 638

S.P. 807 - L.D. 2006

An Act to Extend the Reporting Date of the Commission to Study the Retirement Benefits Provided by the State

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

Whereas, Public Law 1991, chapter 527 created the Commission to Study the Retirement Benefits Provided by the State and set a November 1, 1991 deadline for reporting its findings; and

Whereas, the commission requires additional time in order to adequately report its findings; 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. PL 1991, c. 527, §3, sub-§5 is amended to read:

5. The commission shall submit its findings by ~~November 1, 1991~~ March 15, 1992.

Sec. 2. Retroactivity. This Act is retroactive to November 1, 1991.

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

Effective February 28, 1992.

CHAPTER 639

H.P. 1492 - L.D. 2104

An Act to Clarify the Scope of the Laws Governing Administrative Correction of Statutory Errors

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

Whereas, this Act refines a newly enacted mechanism for remedying certain statutory errors during the annual update of the statutory data base; and