

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

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
1993

Sec. 11. 22 MRSA §4038-A is enacted to read:

§4038-A. Transfer to District Court

If a case is transferred to the District Court pursuant to Title 19, section 1115, the court shall conduct a hearing and enter a dispositional order using the same standards as set forth in section 4036. The court after the hearing and entering of a dispositional order shall conduct reviews in accordance with section 4038.

Sec. 12. 24-A MRSA §2834, first ¶, as enacted by PL 1975, c. 770, §108, is amended to read:

All group and blanket health insurance policies providing coverage on an expense incurred basis ~~which~~ that provide coverage for a family member of the insured or subscriber ~~shall must, as to such family members' coverage,~~ also provide that the health insurance benefits applicable for children shall be payable ~~with respect to~~ for a newly born child of the insured or subscriber from the moment of birth. An adopted child is deemed to be newly born to the adoptive parents from the date of the signed placement agreement. Preexisting conditions of an adopted child may not be excluded from coverage.

Sec. 13. Effective date. This Act takes effect August 1, 1994 and applies to petitions filed on or after that date.

Effective August 1, 1994.

CHAPTER 687

H.P. 347 - L.D. 450

**An Act to Expand Protection to
Persons with Mental Illness and
Mental Retardation**

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

Sec. 1. 17-A MRSA §253, sub-§2, ¶¶H and I, as enacted by PL 1989, c. 401, Pt. A, §4, are amended to read:

H. The other person has not in fact attained the age of 18 years and the actor is a parent, step-parent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person; or

I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other

person, not the actor's spouse, is a patient or client for mental health therapy of the actor. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes, which therapy is based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse; or

Sec. 2. 17-A MRSA §253, sub-§2, ¶J is enacted to read:

J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Mental Health and Mental Retardation or the Department of Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that person as a person with mental retardation. It is an affirmative defense to prosecution under this paragraph that the actor receives services for mental retardation or is a person with mental retardation as defined in Title 34-B, section 5001, subsection 3.

Sec. 3. 17-A MRSA §253, sub-§5, as amended by PL 1991, c. 569, is further amended to read:

5. Violation of subsection 2, paragraph A, B, C, D, E or H is a Class B crime. Violation of subsection 2, paragraph F, G or I or J is a Class C crime.

Sec. 4. 17-A MRSA §255, sub-§1, ¶G, as amended by PL 1993, c. 453, §2, is further amended to read:

G. The other person has not in fact attained the age of 18 years and the actor is a parent, step-parent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person; or

Sec. 5. 17-A MRSA §255, sub-§1, ¶H, as enacted by PL 1993, c. 453, §3, is amended to read:

H. The other person submits as a result of compulsion; or

Sec. 6. 17-A MRSA §255, sub-§1, ¶I is enacted to read:

I. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Mental Health and Mental Retardation or the Department of Human Ser-

vices and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that person as a person with mental retardation. It is an affirmative defense to prosecution under this paragraph that the actor receives services for mental retardation or is a person with mental retardation as defined in Title 34-B, section 5001, subsection 3.

Sec. 7. 17-A MRSA §255, sub-§2, as amended by PL 1993, c. 451, §2, and c. 453, §4, is repealed and the following enacted in its place:

2. Unlawful sexual contact is a Class D crime, except that a violation of subsection 1, paragraph C, G or H is a Class C crime, and a violation of this section when the actor has 2 or more prior Maine convictions for violations of this section is a Class C crime. For purposes of this subsection, the dates of both of the prior convictions must precede the commission of the offense being enhanced by no more than 5 years, although both prior convictions may have occurred on the same day. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date of a commission of an offense is presumed to be that stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent.

Sec. 8. 34-B MRSA §3008 is enacted to read:

§3008. Sexual activity with recipient of services prohibited

A person who owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Mental Health and Mental Retardation or the Department of Human Services may not engage in a sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, with another person or subject another person to sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, if the other person, not the actor's spouse, is a person with mental illness who receives therapeutic, residential or habilitative services from the organization, program or residence.

Sec. 9. 34-B MRSA §5004 is enacted to read:

§5004. Sexual activity with recipient of services prohibited

A person who owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the

Department of Mental Health and Mental Retardation or the Department of Human Services may not engage in a sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, with another person or subject another person to sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, if the other person, not the actor's spouse, is a person with mental retardation who receives therapeutic, residential or habilitative services from the organization, program or residence.

See title page for effective date.

CHAPTER 688

H.P. 1122 - L.D. 1521

An Act Related to Multiple-employer Welfare Arrangements

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

Whereas, many small Maine employers have experienced difficulty in locating affordable and suitable health care benefit coverage for themselves and their employees; and

Whereas, that difficulty in locating coverage has often left small Maine employers vulnerable to unscrupulous or incompetent persons purporting to be able to provide such coverage through arrangements that in reality do not exist or are not capable of providing the promised benefits; and

Whereas, many small Maine employers have been victimized by such arrangements, resulting in loss of funds paid by the employers and in uncovered medical bills for employees; and

Whereas, it has become clear that it is desirable for the Legislature to authorize a secure mechanism for small Maine employers to be able to enter into agreements for the mutual provision of health benefits for their employees; 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-A MRSA c. 79 is enacted to read: