

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

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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

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Sec. 7. 17-A MRSA §255, sub-§2, as amended by PL 1993, c. 451, §2, and c. 453, §4, is repealed and the following enacted in its place: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

CHAPTER 79**MULTIPLE-EMPLOYER WELFARE ARRANGEMENTS****§6601. Definitions**

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

1. Declaration of trust. "Declaration of trust" means a joint statement of those participating employers composing a multiple-employer welfare arrangement in which the purposes, plan of administration, rights and duties of the participants and the manner of funding obligations arising under the arrangement are established.

2. Fund balance. "Fund balance" means the total assets in excess of total liabilities, except that assets pledged to secure debts not reflected on the books of the multiple-employer welfare arrangement are not included in the fund balance. "Fund balance" includes other contributed capital, retained earnings and subordinated debt.

3. Funded trust. "Funded trust" means that legal entity created to receive, hold and administer contributions of employers participating in the arrangement that is composed of assets acceptable to the superintendent equal to or in excess of loss reserves and all other liabilities of the arrangement. A trust is not fully funded if any part of the corpus consists of a surety bond.

4. Insolvent or impaired condition. A multiple-employer welfare arrangement is "insolvent" or in an "impaired condition" when the fund balance is in a deficit position.

5. Multiple-employer welfare arrangement. "Multiple-employer welfare arrangement" or "arrangement" means an employer welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers or to their beneficiaries. "Multiple-employer welfare arrangement" does not include a plan or arrangement established or maintained before January 1, 1993 by the State, a political subdivision of the State or an association composed of political subdivisions of the State primarily to cover its employees, former employees or their dependents, nor does it include a plan or arrangement established or maintained under or pursuant to one or more agreements deemed collective bargaining agreements under the federal Employee Retirement Income Security Act of 1974, Section 3(40)(A)(i), as amended. For purposes of this chapter, 2 or more trades or businesses,

whether or not incorporated, are deemed a single employer if those trades or businesses are under common ownership or within the same control group as defined under the federal Employee Retirement Income Security Act of 1974, Section 3(40)(B).

6. Participation agreement. "Participation agreement" means the document pursuant to which an employer undertakes and agrees to fulfill the obligation of employers imposed by the declaration of trust.

7. Qualified financial institution. "Qualified financial institution" means an institution that is organized, or in the case of a United States branch or agency office of a foreign banking organization is licensed under the laws of the United States or any state, and has been granted authority to operate with fiduciary powers and is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

8. Third-party administrator. "Third-party administrator" or "administrator" means an administrator licensed pursuant to chapter 18.

§6602. Scope

1. Multiple-employer welfare arrangement; approval required. A person may not commence operations after January 1, 1995 of a multiple-employer welfare arrangement unless that arrangement is approved by the superintendent. A person may not operate after January 1, 1995 a multiple-employer welfare arrangement in existence before January 1, 1995 unless that arrangement has been submitted for approval in compliance with this chapter.

2. Insurer authorized to transact health insurance. This chapter does not apply to a multiple-employer welfare arrangement that offers or provides benefits that are fully insured by an insurer authorized to transact health insurance in the State.

3. Application. Section 6608 does not apply to a multiple-employer welfare arrangement that:

A. Meets the general eligibility requirements of section 6603, subsection 1;

B. Is administered primarily from a principal place of business located within the State; and

C. Has provided employee health benefits for a continuous period since on or before January 1, 1984.

4. Application for approval; filing required. If a multiple-employer welfare arrangement does not satisfy the requirements of subsection 3, the arrangement shall file with the superintendent within 60 days

of the effective date of this subsection a complete application for authorization under section 6604.

§6603. General eligibility

1. Requirements for approval. To meet the requirements for approval and to maintain a multiple-employer welfare arrangement, an arrangement:

- A. Must be nonprofit;
- B. Must be established by a trade association, industry association, political subdivision of the State, religious organization or professional association of employers or professionals that has a constitution or bylaws and that has been organized and maintained in good faith for a continuous period of one year for purposes other than that of obtaining or providing insurance;
- C. Must be operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the arrangement and that is responsible for all operations of the arrangement. The trustees selected must be owners, partners, officers, directors or employees of one or more employers in the arrangement. A trustee may not be an owner, officer or employee of the administrator or service company of the arrangement. The trustees have the authority to approve applications of association members for participation in the arrangement and to contract with a state resident licensed administrator or service company to administer the day-to-day affairs of the arrangement;
- D. May not be offered, advertised or available to employers or other members of the public generally;
- E. Must be operated in accordance with sound actuarial principles;
- F. Must comply with the requirements of chapter 36, governing continuity of health insurance coverage;
- G. May not deny coverage to any otherwise eligible employer, employee or dependent on the basis of health status or claims experience; and
- H. May issue only health care benefit plans that comply with the requirements of section 2808-B with regard to rating practices, coverage for late enrollees and guaranteed renewal and must provide health care benefits that meet the requirements for standard and basic plans as adopted by the Bureau of Insurance in Rule Chapter 750.

2. Evidence of benefits; issuance to covered employee. The arrangement shall issue to each covered employee a contract, certificate, summary plan description or other evidence of the benefits and coverages provided. This evidence of the benefits and coverages provided must contain in boldface print in a conspicuous location the following statement: "The benefits and coverages described herein are provided through a trust fund established and funded by a group of employers." Arrangements in existence before October 1, 1993 that have previously issued benefit descriptions to employees may meet the disclosure requirements under this chapter by issuing to each employee additional written material necessary to meet the requirements of this subsection.

3. Maintenance of specific excess insurance. Each arrangement shall maintain specific excess insurance with a retention level determined in accordance with sound actuarial principles and approved by the superintendent. The superintendent may also require the arrangement to purchase aggregate excess insurance.

4. Maintenance of appropriate loss reserves. Each arrangement shall establish and maintain appropriate loss and loss expense reserves determined in accordance with sound actuarial principles and shall fund obligations by depositing assets that will yield in a time frame matching maturing liabilities of the arrangement sufficient funds to discharge claims and other expense payments.

5. Funds held in trust. All funds of a multiple-employer welfare arrangement must be held in trust in the name of the arrangement in a qualified financial institution by state or federally chartered financial institutions.

6. Replacement of trustee. The superintendent may not grant or continue approval until the arrangement replaces any trustee found by the superintendent:

- A. To be incompetent, untrustworthy or financially irresponsible;
- B. To be guilty of or to have pled guilty or no contest in any state or country to a criminal offense for which incarceration for one year or more may be imposed or for which incarceration of one year or more could be imposed had the offense occurred in this State, or that involves moral turpitude, dishonesty, false statement or misappropriation or conversion of property or funds;
- C. To have had any type of insurance license revoked in this State or any other state; or

D. To have improperly manipulated assets, accounts or specific excess insurance or to have otherwise acted in bad faith.

7. Contracts available for inspection. To qualify for and retain approval to transact business, an arrangement must make all contracts with administrators or service companies available for inspection by the bureau initially and thereafter upon reasonable notice.

8. Suspension or revocation of approval. Failure to maintain compliance with applicable eligibility or filing requirements established by this section is grounds for suspension or revocation of authority of an arrangement. However, with respect to deficiencies other than an impairment, the arrangement has 60 days after notification by the superintendent to take action necessary to correct the deficiency.

§6604. Filing requirements

The sponsoring association shall file with the superintendent an application for authorization of the arrangement upon a form to be furnished by the superintendent. The application must include or have attached the following:

1. Constitution or bylaws. A copy of the constitution or bylaws of the association;

2. Identification of trustees. The names and addresses of the trustees of the arrangement;

3. Document governing operation. A copy of the declaration of trust, trust agreement and any other documents that govern the operation of the arrangement;

4. Evidence of benefits provided. A copy of the employer participation agreement and the certificate, summary plan description or other evidence of the benefits and coverage provided to covered employees;

5. Proof of deposit or surety bond. Proof of deposit or a copy of the surety bond required pursuant to section 6607;

6. Excess insurance agreement. A copy of the arrangement's excess insurance agreement;

7. Evidence of sound actuarial principles. Evidence satisfactory to the superintendent showing that the arrangement will be operated in accordance with sound actuarial principles. The superintendent may not approve the arrangement unless the superintendent determines that the plan is designed to provide sufficient revenues to pay current and future

liabilities, as determined in accordance with sound actuarial principles; and

8. Additional information. Additional information that the superintendent may reasonably require.

§6605. Fund balance

Each multiple-employer welfare arrangement shall maintain a positive fund balance.

§6606. Deficiency in reserves, assets or reinsurance

1. Examination of finances. The superintendent may conduct, upon reasonable notice, an examination to determine the financial condition of an arrangement. Examiners duly qualified by the superintendent may examine the loss reserves, assets, liabilities, excess insurance and working capital of a multiple-employer welfare arrangement. If the superintendent finds that the reserves, excess insurance or assets may be inadequate, or that the arrangement does not have working capital in an amount establishing the financial strength and liquidity of the arrangement to pay claims promptly and showing evidence of the financial ability of the arrangement to meet its obligations to covered employees, the superintendent shall notify the arrangement of the inadequacy. Upon notification, the arrangement shall file within 30 days with the superintendent its written plan specifying remedial action to be taken and the time for implementation of that plan.

2. Correction of deficiency. If the superintendent determines, after reviewing the information filed, that a hazardous financial condition exists, the arrangement shall implement within 30 days its plan to correct any deficiencies and shall file with the superintendent proof of remedial action taken within 60 days. If the superintendent is satisfied that the plan submitted to improve the inadequate condition of the arrangement is sufficient, the superintendent shall notify the arrangement. The arrangement shall report monthly to the superintendent until any deficiencies and their causes have been corrected.

§6607. Trust deposit or surety bond

If the superintendent determines that a multiple-employer welfare arrangement has failed to establish or maintain the actuarially indicated level of funding in the trust account, the superintendent may require the arrangement to file a security deposit or a surety bond in accordance with this section.

1. Deposit. If required, deposit funds, which may consist of cash, securities or any combination of cash and securities acceptable to the superintendent, must be filed with the superintendent for deposit with

the Treasurer of State in an amount equal to the greater of either 25% of the immediately preceding 12 months' health care claims expenditures or 15% of the expected gross annual contributions for the current year. In no case may the amount of the deposit be less than \$50,000 or more than \$1,000,000 except that the superintendent, after due notice to all interested parties and opportunity for hearing, and after consideration of the records, may prescribe an amount in excess of \$1,000,000. All income from deposits belongs to the depositing arrangement and must be paid to it when received. An arrangement that has made a security deposit, subject to approval of the superintendent, may withdraw that deposit or any part of that deposit after making a substitute deposit of cash, securities or any combination of cash and securities of equal amount and value. A judgment creditor or other claimant of a multiple-employer welfare arrangement may not levy upon any of the assets or securities held in this State as a deposit under this section.

2. Surety bond in lieu of deposit. In lieu of the deposit required under subsection 1, an arrangement may file with the superintendent a surety bond in like amount. The bond must be one issued by an authorized surety insurer, must be for the same purpose as the deposit in lieu of which it is filed and must be in a form prescribed by the superintendent. A bond may not be canceled or subject to cancellation unless at least 60 days' advance notice of cancellation in writing is filed with the superintendent and the chair of the trustees.

3. Insolvency termination. In the event of a termination of an arrangement due to insolvency, a determination of impairment or the failure of the arrangement to pay any final judgment rendered against it in this State within 30 days after the judgment becomes final, the deposit held by the superintendent pursuant to subsection 1 or the bond held by the superintendent pursuant to subsection 2 must be applied to the extent of the insolvency or to the extent of any default in payment of benefit claims. Any deposit funds remaining in excess of the amount needed to make the arrangement solvent must be distributed in accordance with section 6610.

§6608. Forms

1. Approval of forms by superintendent required. A participation agreement or contract form, application form, certificate, rider, endorsement, summary plan description or other evidence of coverage may not be issued by an arrangement unless the form and all changes to the form have been filed with the superintendent by or on behalf of the arrangement that proposes to use the form and have been approved by the superintendent.

2. Grounds for disapproval of forms by superintendent. The superintendent may disapprove a form filed under this section or withdraw previous approval of a form only if the form:

A. Violates or does not comply with this chapter;

B. Contains or incorporates by reference inconsistent, ambiguous or misleading clauses or exceptions and conditions that deceptively affect the risk proposed to be assumed in the general coverage of the contract;

C. Has any title, heading or other indication of its provisions that is misleading;

D. Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible; or

E. Contains provisions that are unfair, inequitable or encourage misrepresentation.

§6609. Liability of participants

1. Liability of each employer participant. The liability of each employer participant for the obligations of the multiple-employer welfare arrangement is joint and several.

2. Contingent assessment liability. Each employer participant has a contingent assessment liability pursuant to section 6610 for payment of actual losses and expenses incurred while the participation agreement was in force.

3. Statement of contingent liability. Each participation agreement or contract issued by the arrangement must contain a statement of the contingent liability of employer participants. Both the application for participation and the participation agreement must contain, in contrasting color and not less than 10-point type, the following statement: "This is a fully assessable contract. In the event the arrangement is unable to pay its obligations, participating employers will be required to contribute through an equitable assessment the money necessary to meet any unfulfilled obligations."

§6610. Termination

If an arrangement is terminated for any reason, the trust may not be dissolved until all outstanding claims, debts and obligations of the arrangement are paid. The arrangement may retain sufficient funds to provide coverage for such additional period as the trustees of the arrangement consider prudent. In addition, the trustees may purchase such additional insurance as they consider necessary for protection against potential future claims. Any funds remaining

in the arrangement after satisfaction of all obligations must be paid to participating employers or covered employees in an equitable manner meeting with the approval of the superintendent, including, without ruling out other alternatives, equally on a per capita basis to each participating employer or employee who is covered under the arrangement as of the effective date of termination.

§6611. Annual report; actuarial report

1. Filing required. Annually within 4 months of the end of the fiscal year or within such extension of time as the superintendent for good cause may grant, every arrangement shall file a report with the superintendent, verified by the oath of the chair of the board of trustees. The report must summarize the business activities of the trust for the immediately preceding year and must contain a financial statement of the arrangement, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant. The report must also include an analysis of the adequacy of reserves and contributions or premiums charged based on a review of past and projected claims and expenses.

2. Actuarial report. At least once every 2 years each arrangement must have a report prepared by an actuary who is an associate or fellow of the Society of Actuaries and the American Academy of Actuaries as to the actuarial soundness of the arrangement. The report must be filed with the superintendent. The report must consist of at least the following:

A. An assessment of the adequacy of contribution rates in meeting the level of benefits provided and changes, if any, needed in the contribution rates to achieve or preserve a level of funding adequate to enable payment of the benefit amounts provided under the arrangement, which must include a valuation of present assets, valued in accordance with insurance accounting precepts, and prospective assets and liabilities of the plan and the extent of unfunded accrued liabilities;

B. A plan and schedule to amortize any unfunded liabilities and a description of actions taken to reduce unfunded liabilities;

C. A description and explanation of actuarial assumptions;

D. A comparative review illustrating the level of funds available to the arrangement from rates, investment income and other sources realized over the period covered by the report indicating the assumptions used;

E. A certification by the actuary that the report is complete and accurate and that in the actuary's opinion the techniques and assumptions used are reasonable, make good and sufficient provision to meet the obligations of the arrangement and meet the requirements and intent of this chapter; and

F. Other factors or statements as may be reasonably required by the superintendent in order to determine the actuarial soundness of the plan.

§6612. Place of business; records maintenance

Each arrangement must have and maintain its principal place of business in the State and must make available to the superintendent complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of business transacted.

§6613. Grounds for denial, suspension or revocation of arrangement

1. Mandatory denial, suspension or revocation. Subject to other provisions of this chapter, the superintendent shall deny, suspend or revoke an arrangement's authorization if the superintendent finds that the arrangement:

A. Is impaired within the meaning of section 6601, subsection 3;

B. Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or to perform any other legal obligation as to such examination when required by the superintendent;

C. Has failed to pay a judgment rendered against it in the State within 30 days after the judgment becomes final; or

D. No longer meets the requirements for the authority originally granted.

2. Discretionary denial, suspension or revocation. The superintendent, in the superintendent's discretion, may deny, suspend or revoke the authorization of an arrangement if the superintendent finds that the arrangement:

A. Has violated this chapter or a lawful order or rule of the superintendent;

B. Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any

other legal obligation as to such examination when required by the superintendent; or

C. Has failed to correct any deficiency determined pursuant to section 6610.

§6614. Violations

In addition to any other penalties provided for by this Title and subject to this chapter:

1. **Civil penalty.** An arrangement that fails to obtain and maintain a valid approval from the superintendent while operating or maintaining a multiple-employer welfare arrangement is subject to a civil penalty of not less than \$5,000 or more than \$50,000 for each violation; and

2. **Cease and desist order.** The superintendent may issue a cease and desist order if the superintendent finds a person operating or maintaining a multiple-employer welfare arrangement without a currently effective certificate of approval.

§6615. Delinquency proceedings

The rehabilitation, liquidation, conservation or dissolution of a multiple-employer welfare arrangement must be conducted under the supervision of the superintendent, who has all power with regard to the rehabilitation, liquidation, conservation or dissolution of a multiple-employer welfare arrangement granted to the superintendent under the laws governing the rehabilitation, liquidation, conservation or dissolution of insurers.

§6616. Regulatory authority

The superintendent may adopt, pursuant to Title 5, chapter 375, subchapter II, such rules as the superintendent determines reasonable and necessary to carry out properly the functions and responsibilities assigned under the laws of this State.

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

Effective April 15, 1994.

CHAPTER 689

H.P. 1434 - L.D. 1961

An Act to Implement the Recommendations of the Maine Dairy and Nutrition Council and the Maine Dairy Promotion Board

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

Sec. 1. 7 MRSA §2992, as enacted by PL 1991, c. 376, §28, is amended to read:

§2992. Maine Dairy Promotion Board

The Maine Dairy Promotion Board, as established by Title 5, section 12004-H, subsection 3 is within the department. The board consists of the following 5 members: the Commissioner of Agriculture, Food and Rural Resources, or the commissioner's designee, who shall serve ex officio; and 4 producers.

The producer members must be appointed by the commissioner on recommendation of the various producer associations, individuals or unorganized groups of producers in the State. The 4 producer members must include 2 producers selling milk on the Maine market and 2 producers selling milk on the Boston market, Federal Milk Marketing Order No. 1. Producer members selling in the same market may not belong to the same agricultural cooperative or sell their milk to the same dealer.

The first 4 members appointed to the board as reconstituted in this section shall serve one-year, 2-year, 3-year and 4-year terms respectively. The members appointed thereafter shall serve 4-year terms. A person may not be appointed to more than 2 consecutive 4-year terms. In case of a vacancy caused by death, resignation or otherwise, the commissioner shall fill the vacancy for the unexpired period of the term.

The appointed members are entitled to compensation according to Title 5, chapter 379.

The members of the board shall elect a chair. ~~The commissioner may employ a director and such clerks and assistants as necessary and may prescribe their duties and fix their compensation, subject to the Civil Service Law.~~

The board shall appoint an executive director who is the board's chief administrative officer and serves at the pleasure of the board. The executive director shall employ, as the board directs, additional staff who serve at the pleasure of the executive director. The staff of the board is not subject to the Civil Service Law. The salary paid to the executive director and other staff of the board must be fixed by the board, subject to the approval of the Governor. The board may delegate to its staff the power to execute the board's policies and programs, subject to the board's oversight.