

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

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NON-EMERGENCY LAWS IS
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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
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sioner. Following a review of the application and recommendation, the commissioner shall make a final decision and provide a written justification for the decision.

The state board and the commissioner shall test and evaluate this certification waiver process and report their findings to the joint standing committee of the Legislature having jurisdiction over educational matters on or before January 1, 1995.

See title page for effective date.

CHAPTER 322

S.P. 542 - L.D. 1479

An Act to Amend the Laws Relating to Education

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

Sec. 1. 5 MRSA §12004-G, sub-§10-A is enacted to read:

<u>10-A.</u> <u>Education</u>	<u>Adaptive</u> <u>Equipment</u> <u>Loan</u> <u>Program</u> <u>Fund Board</u>	<u>Expenses</u> <u>Only</u>	<u>10</u> <u>MRSA</u> <u>§373</u>
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Sec. 2. 5 MRSA §12004-G, sub-§14-A, as enacted by PL 1989, c. 503, Pt. A, §14, is repealed.

Sec. 3. 10 MRSA §373, sub-§1, as amended by PL 1989, c. 276, §1, is further amended to read:

1. Establishment; membership. There is established the Adaptive Equipment Loan Program Fund Board ~~which shall consist~~ that consists of 9 members as follows: The Commissioner of ~~Human Services~~ Education or the commissioner's designee; the Treasurer of State or the Treasurer of State's designee; an experienced consumer lender; a certified public accountant; and 5 persons with a range of disabilities, all to be appointed by the Governor, subject to review of the ~~Joint Standing Committee~~ joint standing committee of the Legislature having jurisdiction over ~~Housing and Economic Development~~ housing and economic development matters, and confirmed by the Legislature. The board shall annually elect a chair from among its members.

Sec. 4. 20-A MRSA §901, as amended by PL 1985, c. 470, §1, is repealed.

Sec. 5. 20-A MRSA §1001, sub-§9-A is enacted to read:

9-A. Students expelled or suspended under the requirements of the federal Gun-Free School Zones Act of 1994. The school boards shall adopt a policy for expelling a student who is determined to have brought a firearm, as defined in 18 United States Code, Section 921, to school and for referring the matter to the appropriate local law enforcement agency.

A. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than one year, except that the school board may authorize the superintendent to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability must be made in accordance with the federal Individuals With Disabilities Education Act, 20 United States Code, Section 1400 et seq.

B. Nothing in this subsection prevents a school board from:

(1) Offering instructional activities related to firearms or from allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(2) Providing educational services in an alternative setting to a student who has been expelled.

C. In accordance with the proper investigation and due process provisions required in subsection 9, a principal may suspend immediately for good cause a student who is determined to have brought a firearm to school under this subsection.

Sec. 6. 20-A MRSA §6401, as amended by P&SL 1993, c. 67, §1, is repealed.

Sec. 7. 20-A MRSA §18022, sub-§1, as enacted by PL 1993, c. 708, Pt. B, §1, is amended to read:

1. Advisory council. "Advisory ~~committee~~ council" means the advisory ~~committee~~ council for the Division of Deafness.

Sec. 8. 20-A MRSA §18022, sub-§2, as enacted by PL 1993, c. 708, Pt. B, §1, is repealed and the following enacted in its place:

2. Deaf. "Deaf" means that the sense of hearing of an individual is nonfunctional for the purpose of communication and that individual must depend primarily upon visual communication.

Sec. 9. 20-A MRSA §18022, sub-§3, as enacted by PL 1993, c. 708, Pt. B, §1, is repealed.

Sec. 10. 20-A MRSA §18022, sub-§3-A is enacted to read:

3-A. Hard of hearing. "Hard of hearing" means a hearing loss in an individual that results in a functional loss, but not to the extent that the individual must depend primarily upon visual communication.

Sec. 11. 20-A MRSA §18022, sub-§4, as enacted by PL 1993, c. 708, Pt. B, §1, is amended to read:

4. Statewide registry. "Statewide registry" means a current listing, developed in cooperation with various registries throughout the State, of those persons in the State who are deaf or ~~hearing-impaired~~ hard-of-hearing persons.

Sec. 12. 20-A MRSA §§18023 and 18024, as enacted by PL 1993, c. 708, Pt. B, §1, are amended to read:

§18023. Powers and duties

To provide the following services and information to deaf and ~~hearing-impaired~~ hard-of-hearing persons, the Division of Deafness shall:

1. Provide advocacy. Provide cooperative agreements or coordinate with agencies or community resources to provide advocacy for the rights of deaf and ~~hearing-impaired~~ hard-of-hearing persons in the areas of employment, education, legal aid, health care, social services, finance, housing and other personal assistance while avoiding duplication of effort in these areas;

2. Statewide registry. Maintain, coordinate and update a voluntary statewide registry of deaf and ~~hearing-impaired~~ hard-of-hearing persons developed in cooperation with various registries throughout the State. Use of this list is restricted by the provisions of section 18011;

3. Information and referral. Provide information and referral services to deaf and ~~hearing-impaired~~ hard-of-hearing persons and their families on questions related to their disorder;

4. Develop objectives. Develop a plan with goals and objectives for development, planning and implementation within a framework for greater cooperation and coordination among agencies and organizations now serving or having the potential to serve deaf and ~~hearing-impaired~~ hard-of-hearing persons;

5. Community service center. Continue to study the need to establish, maintain and fund at least one community service center where deaf and ~~hearing-impaired~~ hard-of-hearing persons and their families

can receive pertinent information relating to the coordination of services that each requires;

6. Promote accessibility. Promote accessibility to all governmental services for residents of the State who are deaf or ~~hearing-impaired~~ hard-of-hearing persons; and

7. Recommendations. Make recommendations to the Governor and the joint standing committee of the Legislature having jurisdiction over education matters with respect to modifications in existing services or establishment of additional services for deaf and ~~hearing-impaired~~ hard-of-hearing persons and their families.

§18024. Advisory council

There is established within the Department of Education, Office of Rehabilitation Services, Division of Deafness, an advisory ~~committee~~ council consisting of ~~23~~ 24 members and 3 ~~nonvoting~~ members-at-large to be appointed by the Director of the Office of Rehabilitation Services in conjunction with the Director of the Division of Deafness and representing equally consumers, professionals and the public. Members are entitled to compensation in accordance with Title 5, chapter 379.

The Director of the Office of Rehabilitation Services, in conjunction with the Director of the Division of Deafness, shall appoint, from the advisory ~~committee~~ council, a chair and vice-chair to serve 2-year terms. The ~~committee~~ council shall meet at the call of the chair but not less than 4 times during a calendar year. The chair may delegate duties to members to carry out the functions of the ~~committee~~ council.

Sec. 13. 20-A MRSA §18025, as enacted by PL 1993, c. 708, Pt. B, §1, is amended to read:

§18025. Advisory council; powers and duties

The advisory ~~committee~~ council shall advise the Director of the Office of Rehabilitation Services and shall prepare an annual report, which is a public document to the extent that it complies with section 18011. The report must include, but is not limited to:

1. Review. Review of the status of services to deaf and ~~hearing-impaired~~ hard-of-hearing persons;

2. Recommendations. Recommendations for priorities for the development and coordination of services to deaf and ~~hearing-impaired~~ hard-of-hearing persons;

3. Evaluation. An evaluation of the progress made as the result of recommendations made in the preceding report of the chair;

4. Statement of goals. A statement of goals for activities of the division during the subsequent fiscal year; and

5. Implementation of functions. The steps to be taken by the division to implement the functions listed in section 18023.

Sec. 14. 20-A MRSA §18026, sub-§2, as enacted by PL 1993, c. 708, Pt. B, §1, is amended to read:

2. Director of the Division of Deafness; staff; qualifications. The Director of the Division of Deafness and the staff must be knowledgeable of the needs of the deaf and ~~hearing impaired~~ hard of hearing and possess the ability to communicate on a meaningful basis with those persons.

Sec. 15. 20-A MRSA §18070, sub-§§1 and 6, as enacted by PL 1993, c. 708, Pt. G, §1, are amended to read:

1. Blind person. "Blind ~~or visually impaired~~ person" means a person having not more than 20/200 central visual acuity in the better eye after correction or an equally disabling loss of the visual field so that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

6. Manager. "~~Operator~~ Manager" means the blind person, duly licensed by the division, who personally operates the vending facility.

Sec. 16. 20-A MRSA §§18076 and 18077, as enacted by PL 1993, c. 708, Pt. G, §1, are amended to read:

§18076. Business Enterprise Program

To provide blind persons with remunerative employment, enlarge the economic opportunities of blind persons and encourage blind persons to become self-supporting, the officer, board or other authority in charge of a building or property shall grant to the division authority:

1. Vending facility. To install in a building or property a vending facility whenever a vending facility may be operated by ~~an operator~~ a blind person; and

2. Vending machines. To place vending machines operated by the division in a building or property if a vending facility operated by ~~an operator~~ a blind person is not warranted. Income from these vending machines must be used for the purposes set forth in this section.

§18077. Preference

The officer, board or other authority in charge of a building or property shall:

1. Policies. Adopt policies and take actions necessary to ensure that ~~operators~~ blind persons are given preference in the establishment and the operation of vending facilities on property under its jurisdiction;

2. Surveys. Cooperate with the division in surveys of properties and buildings under its control in order to find suitable locations for the operation of vending facilities by ~~operators~~ managers, and after a determination that a facility may be operated by ~~an operator~~ a manager, shall cooperate with the division in the installation of a vending facility;

3. Income. To achieve and protect the preference of blind persons in the operation of vending facilities, arrange for the assignment of the income derived from vending machines that are located in reasonable proximity to and in direct competition with a vending facility for which authority is granted pursuant to this chapter, to the ~~operator~~ manager or ~~operators~~ managers affected. A vending machine that vends articles authorized for vending pursuant to section 18070, subsection 8, and is so located that it attracts customers who would otherwise patronize the vending facility considered to be in reasonable proximity to and in direct competition with the vending facility;

4. Licensing. Not less than ~~30~~ 60 days prior to the ~~license~~ termination, issuance or renewal ~~or licensing of a contract~~ for the operation of a vending facility, inform the division; and

5. Vending machines. Allow the division to place vending machines in a building where a vending facility operated by ~~an operator~~ a manager would not be feasible. Income from these machines accrues to the division's set-aside account for purposes stated in section 18076; and

~~**6. Locations.** Inform the division of locations where vending facilities are planned that might be operated in or near other buildings or properties that may be or may come under the jurisdiction of a department, agency or authority of the State or of a county or a municipality.~~

Sec. 17. 20-A MRSA §18078, sub-§1, as enacted by PL 1993, c. 708, Pt. G, §1, is amended to read:

1. Rules. Prescribe rules governing:

A. The maintenance of a roster of blind persons eligible to become ~~operators~~ managers and issuance of licenses;

B. A fair hearing. In the case of ~~an operator~~ a manager desiring to appeal a decision ~~that the operator determines to be adverse to the operator~~ the division shall appoint a hearing board consisting of 3 persons, one to be chosen by the ~~operator~~ manager, one to be chosen by the division and the 3rd person chosen by the other 2 persons. The decision of the board is final;

C. The right to, the title to and the interest in vending facility equipment and stock; and

D. The civil rights of ~~operators~~ managers;

Sec. 18. 20-A MRSA §18078, sub-§3, as enacted by PL 1993, c. 708, Pt. G, §1, is amended to read:

3. Surveys. Conduct surveys to find locations where vending facilities may be operated by ~~operators~~ blind persons and establish vending facilities as it determines appropriate;

Sec. 19. 20-A MRSA §18079, as enacted by PL 1993, c. 708, Pt. G, §1, is amended to read:

§18079. Construction, remodeling; planning for vending facility

To carry out the purposes of this chapter, when new construction, remodeling, leasing, acquisition or improvement of public buildings or properties is authorized, the agency directing that construction, remodeling, leasing, acquisition or improvement shall, when the size of the building or property warrants, make available suitable space and facilities for vending facilities to be operated in the building or property by ~~operators~~ blind persons.

Sec. 20. 20-A MRSA §18081, as enacted by PL 1993, c. 708, Pt. G, §1, is amended to read:

§18081. Fees

A ~~license fee, a rental fee or other charge~~ may not be ~~demande~~d, ~~assessed~~, ~~exacte~~d, required or received ~~from an operator for the granting of authority to the division to operate a vending facility.~~

See title page for effective date.

CHAPTER 323

S.P. 428 - L.D. 1196

An Act to Encourage an Alternative Fishery

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

Sec. 1. 12 MRSA §6621, sub-§3, as amended by PL 1991, c. 168, §§1 to 3, is further amended to read:

3. Exception. This section ~~shall~~ does not apply to:

A. The taking of shellfish under the authority of section 6856;

B. Shellfish kept or washed in waters sterilized with a system that has been approved in writing by the commissioner, ~~provided that~~ if the waters are also approved for that use;

C. Municipal officials, with express written authorization from the commissioner, who are engaging in activities authorized under section 6671. Requests for exception must be submitted to the commissioner in writing stating the activities proposed and the name of the person designated by the municipal officials to supervise those activities. In addition, the municipality shall, at least 24 hours prior to engaging in the activity, notify the department of the time or times the activity authorized under this paragraph will be conducted; ~~or~~

D. The harvesting of shellfish from closed areas designated for purposes of relaying when harvesting is approved in writing by the commissioner consistent with regulations promulgated under section 6856-; or

E. The harvesting of marine mollusks from closed areas for the use of bait or other uses not meant for human consumption, if the harvesting takes place according to rules adopted by the commissioner. The commissioner may adopt rules that permit the taking, possession, shipping, transportation and selling of marine mollusks for bait or other uses not meant for human consumption, if the rules do not jeopardize certification of the State's shellfish according to the National Shellfish Sanitation Program.

See title page for effective date.

CHAPTER 324

H.P. 860 - L.D. 1191

An Act to Amend the Substance Abuse Testing Laws

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