

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

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

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
1995

(7) Acknowledgment that a resident is entitled to a "bill of rights" including methods of resolving resident complaints and freedom from abuse, neglect and the use of chemical and physical restraints;

(8) Assurances that methods of preventing and responding to incidents involving injury, loss of property, abuse and neglect will be identified and implemented; and

(9) Recognition of a resident's transfer rights under section 6228.

The department may adopt reasonable rules further defining the rights contained in this subsection. Nothing in this subsection affects the rights of nursing facility residents or residential care residents as currently provided by state or federal law or regulation.

2. Meetings with provider. A provider must be available for meetings with residents and their representatives at least once every 3 months. These meetings are for the purpose of providing a forum for free and open discussion of any point the residents or the provider wishes to discuss. At least 2 weeks' notice of each meeting must be given to residents.

Sec. 34. 24-A MRSA §6228 is enacted to read:

§6228. Transfer of residents

A resident of a continuing care retirement community may be transferred to a residential care unit or a bed within the skilled nursing facility under the following conditions:

1. Written consent. With the written consent of the resident or the resident's authorized representative; or

2. Health or safety danger. Upon a finding that the resident poses a health or safety danger to other residents or a change in a resident's health status or abilities necessitates a move to a higher level of care. A decision to transfer or change a resident's accommodations may be made only after extended consultation between the provider's interdisciplinary team, including, but not limited to, medical personnel, social workers and therapists of the community, and the resident, the resident's treating physician and the resident's family or other representative. The decision may also consider all reasonable care alternatives. A written decision to transfer or change a resident's accommodations must describe why the resident's health care needs can not be met at the resident's present location. The resident may appeal this determination to the department pursuant to rules prescribed by the department.

Sec. 35. Application. Any provider holding a preliminary or final certificate of authority or both as of the effective date of this Act is subject only to the provisions of the law in effect prior to October 1, 1994.

See title page for effective date.

CHAPTER 453

H.P. 1069 - L.D. 1504

An Act to Clarify Terms and Increase Effectiveness of the Lead Poisoning Control Act

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

Sec. 1. 22 MRSA §1315, sub-§1-B, as enacted by PL 1991, c. 810, §3, is repealed.

Sec. 2. 22 MRSA §1315, sub-3-A, as enacted by PL 1991, c. 810, §5, is amended to read:

3-A. Environmental lead hazard. "Environmental lead hazard" means the presence of lead in any form that exceeds the permissible concentration and that exists in an unacceptable condition. "Permissible concentration" and "unacceptable condition" are defined by rules ~~adopted by the department~~ adopted under this Act, using information currently available on environmental lead hazards, including but not limited to information from the federal Environmental Protection Agency or the federal Department of Housing and Urban Development. "Environmental lead hazard" may include, but is not limited to, lead in dust, paint, soil or water.

Sec. 3. 22 MRSA §1315, sub-§3-D is enacted to read:

3-D. Interim controls. "Interim controls" means a set of measures designed to temporarily reduce human exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment of management and resident education programs.

Sec. 4. 22 MRSA §1315, sub-§5-A, as enacted by PL 1991, c. 810, §9, is amended to read:

5-A. Lead-free. "Lead-free" means that a ~~children's home, residential child-care facility or~~ preschool facility, dwelling or premises contains no lead that is injurious or that could be injurious in the future.

Sec. 5. 22 MRSA §1315, sub-§§5-C, 5-D, 5-E and 5-F, as enacted by PL 1991, c. 810, §9, are amended to read:

5-C. Lead poisoning. "Lead poisoning" means a confirmed elevated level of blood lead that is injurious, as defined in rules adopted by the department using intervention levels no higher than those set by the federal Centers for Disease Control.

5-D. Lead-safe. "Lead-safe" means that a ~~children's home,~~ residential child-care facility or preschool facility, dwelling or premises does not contain lead at a level or in a condition that constitutes an environmental lead hazard.

5-E. Occupant. "Occupant" means a person who resides in or uses regularly a dwelling, ~~children's home~~ residential child-care facility or preschool facility.

5-F. Owner. "Owner" means any person who individually, jointly or in common with others:

~~A. Has legal title to any dwelling or premises or, if the person having legal title can not be located through reasonable efforts, is the owner's agent, as described in Title 14, section 6023;~~

~~B. Is the guardian of the owner or is the executor, administrator or trustee of the estate of the owner;~~

C. Is the chief executive officer of the municipality, school administrative unit or state agency that controls the use of publicly owned property; ~~or~~

D. Is a mortgagee who has taken actual possession in accordance with applicable law. A mortgagee who has not taken actual possession is not the owner; or

E. Is characterized by the following:

(1) Has legal title to any dwelling or premises;

(2) Has charge, care or control of any premises as owner or agent of the owner and has authority to expend money for compliance with the state sanitary code or as an executor, an administrator, a trustee or a guardian of the estate or the holder of legal title;

(3) Is a real estate property manager or other entity that has the authority to fund capital or major property rehabilitation on the owner's behalf;

(4) Is an estate or trust of which the premises is a part or the grantor or beneficiary of an estate or trust; or

(5) Is the association of unit owners of a condominium or cooperative, which is considered as owner solely with respect to common areas and exterior surfaces and fixtures of that condominium or cooperative.

Sec. 6. 22 MRSA §1315, sub-§6-C is enacted to read:

6-C. Small preschool facility. "Small preschool facility" means a preschool facility, as defined in subsection 6-B, licensed to take no more than 12 children in its program.

Sec. 7. 22 MRSA §1315-A, first ¶, as enacted by PL 1991, c. 810, §18, is amended to read:

The commissioner may take any action that is in accordance with the purposes of this chapter and is within the powers granted in this Title to protect ~~children~~ the public from lead poisoning. That action may include, but is not limited to, the following:

Sec. 8. 22 MRSA §1316, sub-§§1 and 2, as amended by PL 1991, c. 810, §19, are further amended to read:

1. Interiors. In or upon any exposed surface of a dwelling, ~~children's home~~ residential child-care facility or preschool facility;

2. Fixtures. In or upon any fixtures or other objects used, installed or located in or upon any exposed surface of a dwelling, ~~children's home~~ residential child-care facility or preschool facility or intended to be so used, installed or located; and

Sec. 9. 22 MRSA §1319-B, as enacted by PL 1991, c. 810, §26, is repealed and the following enacted in its place:

§1319-B. Inspection of residential child-care facilities and preschool facilities

The department shall adopt rules that require all residential child-care facilities and preschool facilities to have environmental lead inspections at least every 3 years except that environmental lead inspections are not required if the residential child-care facility or preschool facility has been certified by a lead inspector as lead-safe within the previous 3 years or has been certified as lead-free. As of July 1, 1998, a small preschool facility, residential child-care facility or preschool facility may not be licensed, registered, certified or otherwise approved or receive any state funds unless it is in compliance with this section.

Sec. 10. 22 MRSA §1321, first ¶, as amended by PL 1991, c. 810, §28, is further amended to read:

If the department determines that an environmental lead hazard exists in or on any dwelling, premises, ~~children's home~~ residential child-care facility or preschool facility:

Sec. 11. 22 MRSA §1321, sub-§§1, 3 and 4, as amended by PL 1991, c. 810, §28, are further amended to read:

1. Notice posted. The department shall post in or upon the dwelling, premises, ~~children's home~~ residential child-care facility or preschool facility, in a conspicuous place or places, notice of the existence of environmental lead hazard. Notice may not be removed until the department states that the environmental lead hazard no longer exists;

3. Notice to owner; removal. The department shall give notice of the existence of the environmental lead hazard to the owner and order that the lead-based substances be removed, replaced or securely and permanently covered within 30 days of receipt of the notice. The department shall adopt rules for removal, replacement or covering of the lead-based substance. If the lead-based substances can not be removed, replaced or securely and permanently covered within 30 days, the department may grant an extension of reasonable time; ~~and~~

4. Sale of dwelling, residential facility or preschool facility. If, before the end of the 30-day period or extension, the owner sells the dwelling, premises, ~~children's home~~ residential child-care facility or preschool facility, the owner must notify the prospective buyer of the environmental lead hazard and the new owner must assume the responsibility of carrying out the requirements of this section within the specified time period; ~~and~~

Sec. 12. 22 MRSA §1321, sub-§5 is enacted to read:

5. Abatement procedures. An individual performing abatement procedures authorized under this Act is subject to the standards and rules adopted under this Act, including the abatement and postabatement testing standards.

Sec. 13. 22 MRSA §1322, as enacted by PL 1991, c. 810, §29, is amended by adding at the end a new paragraph to read:

If the owner decides to bring any residential dwelling or premises into compliance with this Act while a tenant is occupying a dwelling unit, the owner may move the tenant to a substitute dwelling unit upon reasonable notice as long as the owner pays reason-

able moving expenses and any use and occupancy charges for a substitute dwelling unit that exceed the rent for the vacated dwelling unit for which the tenant remains responsible. "Substitute dwelling unit" means a dwelling unit of like or similar accommodation and in like or similar location that is lead-safe. If the tenant fails to accept the substitute dwelling unit selected by the owner while the owner is required to bring the vacated dwelling unit into compliance with this Act or the tenant fails to remain current in rent pursuant to the lease or tenancy at will under Title 14, section 6002, including the statutory period of right to cure, the owner is not obligated beyond 10 days after completion of remediation to reimburse the tenant for any expense or inconvenience other than moving expenses and any use and occupancy charges for the substitute dwelling unit selected by the owner that exceed the rent for the vacated dwelling unit.

Sec. 14. 22 MRSA §1322-A, sub-§1, as enacted by PL 1991, c. 810, §30, is amended to read:

1. Prohibition. A person may not conduct environmental lead inspections or lead abatement unless that person is licensed by the department under this chapter or unless the person is at least 18 years of age and is performing lead abatement ~~on or~~ in the dwelling unit of which the person is ~~an~~ the owner and occupant. This prohibition includes persons located in other states who offer lead-related services to residents of the State directly or through the mail.

Sec. 15. 22 MRSA §1323, first ¶, as amended by PL 1991, c. 810, §31, is further amended to read:

The department shall adopt rules to carry out the purposes of this chapter and to ensure that state law relating to lead poisoning satisfies minimum requirements of federal law in all respects. The rules may address, but are not limited to, the following:

Sec. 16. 22 MRSA §1323, sub-§3, as enacted by PL 1991, c. 810, §31, is amended to read:

3. Inspections; tests; abatement. Inspecting, testing and abating lead in dwellings where children are at risk of lead poisoning, in ~~children's homes~~ residential child-care facilities and in preschool facilities;

Sec. 17. 22 MRSA §1324-A, as amended by PL 1991, c. 810, §32, is repealed and the following enacted in its place:

§1324-A. Liability of owners; damages

The owner of any dwelling, premises, residential child-care facility or preschool facility is liable for damages as a result of lead poisoning in accordance with this section.

1. Owner liable for damages. Subject to the limitation of liability under subsection 3, an owner is liable for all damages caused by failure to perform the duties required under this chapter.

2. Punitive damages. Subject to the limitation of liability under subsection 3, an owner who has received notice under this chapter of an environmental lead hazard and who does not satisfactorily correct or remove the environmental lead hazard is, in addition to subsection 1, subject to punitive damages, which are treble the actual damages found.

3. Limitation on award. In actions for damages, the claim for and award of damages for all losses, except expenses for medical care and treatment, including devices and aids, may not exceed \$750,000 except for the following claims:

A. Claims against lead abatement professionals licensed under this chapter;

B. Claims against an individual who rents or sells property to anyone with children, has knowledge of the presence of an environmental lead hazard in a dwelling or dwelling unit and deliberately fails to disclose to the prospective tenant or buyer the presence of lead paint; and

C. Claims against an individual who receives written notification of the presence of an environmental lead hazard or of a child-poisoning incident and who fails or refuses to take corrective measures, including interim controls, within a 60-day period from the date of notification.

4. Repeal. This section is repealed April 15, 1996.

Sec. 18. 22 MRSA §1326, as amended by PL 1991, c. 810, §34, is further amended to read:

§1326. Injunction requiring removal

If the lead-based substance remains an environmental lead hazard at the expiration of 30 days or at the expiration of an extension given by the commissioner pursuant to section 1321, the State, in addition to any other remedies it has, may seek a mandatory injunction ordering the environmental lead hazard removed by a suitable 3rd party at the expense of the owner of the dwelling, premises, ~~children's home residential child-care facility~~ or preschool facility.

Sec. 19. 22 MRSA §1327 is enacted to read:

§1327. Essential maintenance practices

Notwithstanding any other provision of law, an owner of a building constructed prior to 1978 that is rented for residential purposes or used as a residential

child-care facility or a preschool facility may perform essential maintenance practices if the owner:

1. Precautions. Takes all necessary precautions to avoid creating lead hazards during any renovation, remodeling, maintenance or repair project that disturbs a lead-based painted surface pursuant to guidelines issued by the department. For purposes of essential maintenance practices, all paint is presumed to be lead-based unless a certified inspector has determined that it is not lead-based paint. The guidelines must include:

A. A prohibition against paint removal by burning, water blasting, dry scraping, power sanding or sandblasting, unless undertaken with proper containment, cleanup and disposal;

B. A description of good work practices and precautions to prevent the spread of lead dust, including limiting access to work areas to workers, covering the work area with appropriate protective covering, protecting workers, protecting belongings of occupants by covering or removing them from the work area, wetting painted surfaces before disturbing the paint and wet sweeping debris; and

C. Appropriate cleaning of the work area at the conclusion of the work using methods designed to remove lead dust;

2. Checks. Performs visual checks of the property to identify deteriorated paint upon a change of tenant or within 12 months of the effective date of this subsection, whichever is sooner, and annually thereafter;

3. Removes or stabilizes paint. Promptly and safely removes or stabilizes paint if more than one square foot of deteriorated paint is found on any interior surface, exterior porch or exterior wall or surface or fixture within an exterior porch, and restore that surface within 30 days after visual identification of deteriorated paint or within 30 days of receiving a written or oral report of deteriorated paint from a tenant or from an owner of a child-care facility. If exterior repair work is identified after November 1st of any year, the repair work may be delayed but must be commenced no later than May 31st of the following year;

4. Repairs. If more than one contiguous square foot of deteriorated paint is found on any exterior wall, surface or fixture not covered by subsection 3 and is located in an area frequented by children in warm weather, promptly and safely repairs and stabilizes the paint and restores the surface or prohibits access to the area, surface or fixture to ensure that children can not come into contact with the deteriorated paint; and

5. Provides information. Provides written lead-based paint hazard information to current and prospective tenants and to current and prospective owners or managers of child-care or preschool facilities, including but not limited to information on the importance of promptly reporting the presence of deteriorated paint to the owner or to the owner's agent. The notice must include the name, address and telephone number of the owner or the owner's agent.

See title page for effective date.

CHAPTER 454

H.P. 1093 - L.D. 1538

An Act to Strengthen the Motor Vehicle Laws Pertaining to Registration of Motor Vehicles

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

Sec. 1. 29-A MRSA §101, sub-§62, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

62. Resident. "Resident" means a person who has declared or established residency in this State or has been domiciled in this State for a period of at least 30 days, except for persons in compliance with section 109, subsection 1.

A nonresident who has a place of business in this State Except for a person in compliance with section 109, subsection 1, a person is deemed to be a resident:

A. For all vehicles owned by that person that are garaged or maintained in this State; or

B. If engaged in the business of renting you-drive or you-haul vehicles for an apportioned share of all vehicles based on the ratio of the mileage of vehicles operated in this State to the total mileage of vehicles operated both within and without the State.

Sec. 2. 29-A MRSA §351, sub-§1-A is enacted to read:

1-A. Residents required to register. An owner establishing residency in the State shall apply for a registration within 30 days of becoming a resident.

Sec. 3. 29-A MRSA §514, first ¶, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

A person required to register a vehicle in this State who instead registers the vehicle in another state or province or who fails to register a vehicle in this

State within 30 days of establishing residency is guilty of evasion of registration fees and excise taxes. Violation of this section is a traffic infraction punishable by a fine of not less than \$500 nor more than \$1,000.

See title page for effective date.

CHAPTER 455

S.P. 562 - L.D. 1530

An Act to Modify and Update Certain Laws Pertaining to Inland Fisheries and Wildlife

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

Whereas, confusion exists as to the application of certain laws administered by the Department of Inland Fisheries and Wildlife; and

Whereas, this confusion poses difficulties for the sporting public and those charged with enforcement of these laws; and

Whereas, it is vitally necessary that this confusion be resolved to prevent any injustice or hardship to the hunters, anglers, trappers and recreational vehicle owners of the State; 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. 12 MRSA §7035, sub-§11-A, as enacted by PL 1989, c. 177, is repealed.

Sec. 2. 12 MRSA §7071, sub-§8, as enacted by PL 1985, c. 90, is repealed and the following enacted in its place:

8. Trespass reminder. The following notice must be printed on each hunting and fishing license: This license does not authorize you to enter private property without permission.

Sec. 3. 12 MRSA §7074, sub-§6 is enacted to read:

6. Rules. Notwithstanding any other provision of this section, the commissioner may adopt rules as necessary to satisfy the provisions of the federal