

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

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

§2904. Immunity from civil liability for volunteer activities

1. Health care practitioners. Notwithstanding any inconsistent provision of any public or private and special law, a licensed health care practitioner who voluntarily, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides professional services within the scope of that health care practitioner's licensure to a nonprofit organization or to an agency of the State or any political subdivision of the State or to members or recipients of services of that organization or state or local agency is not liable for an injury or death arising from those services unless the injury or death was caused willfully, wantonly, recklessly or by gross negligence of the health care practitioner.

2. Retired physicians, podiatrists and dentists. Notwithstanding any inconsistent provision of any public or private and special law, a licensed physician, podiatrist or dentist who has retired from practice and who voluntarily, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides professional services within the scope of that physician's, podiatrist's or dentist's licensure to a nonprofit organization or to an agency of the State or any political subdivision of the State or to members or recipients of services of that organization or state or local agency is not liable for an injury or death arising from those services unless the injury or death was caused willfully, wantonly or recklessly by the physician, podiatrist or dentist. This extended immunity applies only if the licensed physician, podiatrist or dentist retired from practice, possessed an unrestricted license in the relevant profession and had not been disciplined by the licensing board in the previous 5 years at the time of the act or omission causing the injury.

3. Terms. For the purpose of this section, the term:

A. "Dentist" means a person who practices dentistry according to the provisions of Title 32, section 1081;

B. "Health care practitioner" has the same meaning as provided in section 2502;

C. "Nonprofit organization" does not include a hospital; and

D. "Podiatrist" has the same meaning as provided in Title 32, section 3551.

Sec. C-4. 29-A MRSA §403, as amended by PL 1995, c. 6, §1 and repealed by c. 49, §1 and c. 50, §1, is repealed.

Sec. C-5. PL 1993, c. 732, Pt. A, §8 is amended to read:

Sec. A-8. 38 MRSA §1303-C, sub-§39, as amended by PL 1993, c. 424, §2 and affected by §3, is further amended to read:

39. Treatment. "Treatment" means any process, including but not limited to incineration, designed to change the character or composition of any hazardous waste, waste oil or biomedical waste so as to render the waste less hazardous or infectious. "Treatment" also means any process including but not limited to incineration designed to change the character of composition of any waste oil, as defined in rules adopted under section 1319-O, subsection 2, or biomedical waste so as to render the waste less hazardous.

Sec. C-6. PL 1995, c. 7, §2 is repealed.

Sec. C-7. Retroactivity. That section of this Part that repeals Public Law 1995, chapter 7, section 2 is effective retroactively to June 29, 1995.

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

Effective April 8, 1996, unless otherwise indicated.

CHAPTER 626

S.P. 727 - L.D. 1833

An Act to Clarify the Definition of Commercial Whitewater Outfitter

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

Whereas, the 90-day period will not terminate until after the spring whitewater rafting season; and

Whereas, the provisions of this Act preclude potential criminal actions against whitewater rafting clubs; 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 §7365-A is enacted to read:

§7365-A. Noncommercial organizations that collect dues or fees; commercial whitewater outfitters license not required

Notwithstanding section 7363, subsection 6, an organization that collects dues or fees may conduct rafting trips on rapidly flowing rivers without obtaining a commercial whitewater outfitters license if the commissioner determines under the provisions of this section that the organization is a noncommercial organization. An organization is a noncommercial organization if the commissioner determines that the organization is:

1. Tax-exempt nonprofit corporations formed before March 1, 1996. A nonprofit corporation incorporated before March 1, 1996, including any council, troop or other organized local group affiliated with the corporation, that collects dues or fees from its members and for which conducting whitewater rafting is incidental to the purpose of the corporation. The organization wishing to conduct a rafting trip on a rapidly flowing river without a commercial license under the provisions of this subsection must file a written request with the commissioner at least 15 days before conducting that trip. The request must include the name of the organization conducting the trip and the time, location and number of persons participating in the trip. The commissioner may request any additional information from the organization necessary to make a determination under this subsection. Notwithstanding any other provision of this section, the commissioner may not allow any council, troop or other organized local group affiliated with the corporation to conduct more than 2 whitewater rafting trips in any one calendar year without obtaining a commercial whitewater outfitter's license; or

2. Noncommercial whitewater rafting clubs. A qualifying noncommercial whitewater rafting club. A "qualifying noncommercial whitewater rafting club" is a group that collects dues or fees from its members and that the commissioner determines to be organized solely to provide noncommercial whitewater rafting opportunities to its members. To be considered under this subsection, a club must provide to the commissioner the following information before January 1st of each year:

A. A list that includes the name, legal residence and home telephone number of each member of the club. That list must identify a member as the president of the club and must identify any other officers or board members of the club. An officer or a board member of the club may not be a commercial whitewater outfitter or a licensed whitewater guide. The commissioner may not accept more than one amended membership list

from a club in any calendar year. Only those persons whose names appear on a list filed under this paragraph may participate in a rafting trip of that club on any rapidly flowing river;

B. A statement signed by all board members, if any, and all officers of the club swearing that:

(1) The sole purpose of the club is to provide noncommercial whitewater rafting opportunities to its members;

(2) No member of the club, including officers and board members, receive any form of compensation from the club at any time, either while a member of the club or afterwards;

(3) The club will use its own rafting equipment and all fees or dues collected from club members are used only to purchase and maintain rafting equipment for use solely by the club; and

(4) The club will not employ or otherwise compensate any person for any service relating to rafting or accept any gifts of products or services from any commercial whitewater outfitter or licensed whitewater guide; and

C. Any other information the commissioner determines necessary. If the club is an incorporated entity, the commissioner shall require the club to submit a copy of the club's articles of incorporation. The commissioner may not consider any incorporated entity other than a tax-exempt, nonprofit corporation as a noncommercial whitewater rafting club.

When authorizing a noncommercial organization under this section to conduct whitewater rafting trips without a commercial license, the commissioner shall, when the commissioner determines necessary, place limits on that organization's whitewater rafting activities, including limits on the time and location of rafting activities, the number of persons that may participate in those rafting activities and the safety equipment required for rafting trips. The commissioner may reject a request under this section if the commissioner determines that granting the request would conflict with the river management objectives set forth in section 7364.

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

Effective April 8, 1996.