

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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
1997

and patterns, the use of overtime assignments and training and job development;

F. Input into public relations efforts of the department and the mental health institutes and community education initiatives; and

G. Monitoring building and grounds maintenance and safety and risk management on the campuses of the mental health institutes.

See title page for effective date.

CHAPTER 366

H.P. 971 - L.D. 1351

An Act to Amend the Maine Workers' Compensation Act of 1992 Regarding Nonresident Employers

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

Sec. 1. 39-A MRSA §401, sub-§6 is enacted to read:

6. Nonresident employers. A nonresident employer whose employees work in the State shall obtain coverage under this Act from an insurer or self-insurer authorized in the State unless exempt under section 113 or unless the employer would be exempt if located in the State.

See title page for effective date.

CHAPTER 367

S.P. 433 - L.D. 1379

An Act to Expand Options for Investment of Certain Municipal Trust Funds

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

Sec. 1. 30-A MRSA §5706, sub-§3, as amended by PL 1995, c. 206, §1, is further amended to read:

3. Mutual funds. In the shares of an investment company registered under the United States Investment Company Act of 1940, Public Law 76-768, whose shares are registered under the United States Securities Act of 1933, Public Law 73-22, provided that the investments of the fund are limited to bonds and other direct obligations of the United States Government, as defined in section 5712, subsection 1

or repurchase agreements secured by bonds and other direct obligations of the United States Government, as defined in section 5712, subsection 1; or

Sec. 2. 30-A MRSA §5706, sub-§3-A is enacted to read:

3-A. Mutual funds for trusts governed by the United States Internal Revenue Code, Section 501(c)(3). In the case of a trust fund that is governed by the United States Internal Revenue Code, Section 501 (c) (3) (1997), in the shares of any investment company registered under the United States Investment Company Act of 1940, Public Law 76-768, whose shares are registered under the United States Securities Act of 1933, Public Law 73-22, as long as:

A. The investment is approved by the municipal officers at a public meeting;

B. No more than 50% of the assets of the trust are invested in mutual funds under this subsection; and

C. No more than 5% of the assets of the trust are invested in a single mutual fund under this subsection; or

See title page for effective date.

CHAPTER 368

H.P. 1017 - L.D. 1409

An Act to Require Mandatory Testing for Blood-borne Pathogens of Persons Who Are the Source of a Bona Fide Occupational Exposure

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

Sec. 1. 22 MRSA c. 250, sub-c. IV is enacted to read:

SUBCHAPTER IV

MANDATORY BLOOD-BORNE PATHOGEN TEST

§831. Definitions

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

1. Bona fide occupational exposure. "Bona fide occupational exposure" means skin, eye, mucous membrane or parenteral contact of a person with the potentially infectious blood or other body fluids of

another person that results from the performance of duties by the exposed person in the course of employment.

2. Blood-borne pathogen test. "Blood-borne pathogen test" means a test that indicates the presence of a specific blood-borne transmissible infectious agent.

3. Employer; employer of the person exposed. "Employer" or "employer of the person exposed" includes a self-employed person who is exposed to the potentially infectious blood or other body fluids of another person.

4. Informed consent. "Informed consent" means consent that is:

A. Based on an actual understanding by the person to be tested:

- (1) That the test is being performed;
- (2) Of the nature of the test;
- (3) Of the persons to whom the results of that test may be disclosed;
- (4) Of the purpose for which the test results may be used; and
- (5) Of any reasonably foreseeable risks and benefits resulting from the test; and

B. Wholly voluntary and free from express or implied coercion.

5. Person. "Person" means any natural person, firm, corporation, partnership or other organization, association or group.

§832. Judicial consent to blood-borne pathogen test

1. Petition. Any person who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the facility or other place where the exposure occurred to require the person whose blood or body fluid is the source of the exposure to submit to a blood-borne pathogen test and to require that the results of the test be provided to the petitioner as long as the following conditions have been met:

A. The exposure to blood or body fluids creates a significant risk of infection with a blood-borne pathogen, as defined by the Bureau of Health through the adoption of rules;

B. The authorized representative of the employer of the person exposed has informed the person whose blood or body fluid is the source of the occupational exposure and has sought to

obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested.

2. Prehearing duties of the court. Upon receipt by the District Court of the petition, the court shall:

A. Schedule a hearing to be held as soon as practicable;

B. Cause a written notice of the petition and hearing to be given, in accordance with the Maine Rules of Civil Procedure, to the patient who is the subject of the proceeding;

C. Appoint counsel, if requested, for any indigent client not already represented; and

D. Furnish counsel with copies of the petition.

3. Hearing. The hearing is governed as follows.

A. The hearing must be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure.

B. The hearing is confidential and must be electronically or stenographically recorded.

C. The report of the hearing proceedings must be sealed. A report of the hearing proceedings may not be released to the public, except by permission of the person whose blood or body fluid is the source of the exposure or that person's counsel and with the approval of the court.

D. The court may order a public hearing at the request of the person whose blood or body fluid is the source of the exposure or that person's counsel.

4. Determination. The court shall require the person whose blood or body fluid is the source of the exposure to obtain a blood-borne pathogen test and shall require that the results of the test be provided to the petitioner only if the petitioner proves by a preponderance of the evidence that:

A. The exposure to blood or body fluids of the person created a significant risk of infection with a blood-borne pathogen as defined by the Bureau of Health through the adoption of rules;

B. An authorized representative of the employer of the person exposed has informed the patient of

the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested.

5. Consent. The court may not order a person whose blood or body fluid is the source of the exposure to obtain a blood-borne pathogen test unless the employee exposed to the blood or body fluids of that person has consented to and obtained a blood-borne pathogen test immediately following that documented exposure.

6. Costs. The employer of the person exposed is responsible for the petitioner's reasonable costs related to obtaining the results of a blood-borne pathogen test pursuant to this section, including the payment of the petitioner's attorney's fees.

7. Appeals. A person required to undergo a blood-borne pathogen test may appeal the order to Superior Court. The appeal is limited to questions of law. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

8. Subsequent testing. Subsequent testing arising out of the same incident of occupational exposure must be conducted in accordance with this section.

§833. Confidentiality

No other disclosure of HIV test results may be made without written authorization from both the person tested and the person exposed.

§834. Counseling for HIV

If an HIV test, as defined in Title 5, section 19201, is conducted as a result of a court order pursuant to section 832, both the person tested and the person exposed must be offered counseling pursuant to Title 5, section 19204-A.

§835. Rulemaking

Rules adopted by the Bureau of Health pursuant to this subchapter are routine technical rules under Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 369

H.P. 1036 - L.D. 1453

An Act to Provide Subrogation Equity

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

Sec. 1. 24 MRSA §2316, as amended by PL 1981, c. 205, §1, is further amended to read:

§2316. Certificates or contracts; approval by superintendent

~~No~~ A nonprofit hospital and medical service organization ~~shall may not~~ issue or deliver in this State any certificate or other evidence of any contract unless and until the form ~~thereof used~~, together with the form of application and all riders or endorsements for use in connection ~~therewith~~, shall with the certificate or other evidence of a contract, have been filed with and approved by the superintendent ~~and approved by him~~ as conforming to reasonable rules and regulations from time to time made by ~~him~~ the superintendent and as ~~not inconsistent~~ consistent with any other provisions of law ~~applicable thereto~~. The superintendent shall, within a reasonable time after the filing of any such form, notify the organization filing the ~~same form~~ either of ~~his~~ the approval or of ~~his~~ the disapproval of ~~such~~ the form. The superintendent may approve any ~~such~~ form ~~which that~~ in ~~his~~ the superintendent's opinion contains provisions on any one or more of the several requirements made by ~~him~~ ~~which~~ the superintendent that are more favorable to the subscribers than the one or ones ~~so~~ required. The superintendent ~~shall have power, from time to time, is~~ authorized to make, alter and supersede reasonable regulations prescribing the required, optional and prohibited provisions in ~~such any~~ contracts, and such regulations ~~shall must~~ conform, as far as practicable, to Title 24-A, chapters 33 and 35. ~~Where~~ If the superintendent ~~deems~~ determines those chapters to be inapplicable, either in part or in their entirety, ~~the foregoing chapters, he~~ the superintendent may prescribe the portions or summary ~~thereof~~ of the contract to be printed on the certificate issued to the subscriber. ~~No contracts~~ A contract may not be delivered or issued for delivery in this State ~~unless they meet~~ it meets the requirements of Title 24-A, sections 2438 to 2445, ~~section 2729-A~~ and section 2747. Any filing made ~~hereunder shall be~~ in accordance with this section is deemed approved unless disapproved within 60 days from the date of ~~such~~ the filing.

Sec. 2. 24-A MRSA §2910-A is enacted to read:

§2910-A. Subrogation; medical payments coverage