

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

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

Sec. 4. 20-A MRSA §13011, sub-§1, ¶D, as amended by PL 1995, c. 207, §1, is further amended to read:

D. Seek a revocation of a certificate in the Administrative Court; ~~and~~

Sec. 5. 20-A MRSA §13011, sub-§1, ¶E, as enacted by PL 1995, c. 207, §1, is amended to read:

E. Certify or authorize personnel who provide early childhood educational programs or developmental therapy to children with disabilities from birth to under 9 years of age in the home, in community-based special purpose and integrated programs and in public schools; ~~and~~

Sec. 6. 20-A MRSA §13011, sub-§1, ¶F is enacted to read:

F. Approval must be obtained from the department and maintained by all individuals for whom certification or authorization is not required prior to being hired or being placed under contract by a public school or an approved private school.

Sec. 7. 20-A MRSA §13011, sub-§8 is enacted to read:

8. Criminal history record checks. Criminal history record checks of an applicant for certification, authorization, approval or renewal must be conducted in accordance with this section, section 6103 and pursuant to rules adopted by the state board. Rules adopted pursuant to this subsection are minor technical rules in accordance with Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 453

H.P. 1214 - L.D. 1714

An Act to Implement the Recommendations of the Department of Human Services Study Group on Prosecution of Crimes against the Elderly

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

Sec. 1. 9-B MRSA §161, sub-§2, ¶I, as amended by PL 1995, c. 419, §5, is further amended to read:

I. Any disclosure of records made pursuant to Title 22, section 16, 17, 3477 or 4314;

Sec. 2. 18-A MRSA §5-411, as amended by PL 1995, c. 291, §2, is repealed and the following enacted in its place:

§5-411. Bond

The following provisions govern bonds for conservators.

(a) The Probate Court shall require a conservator of an estate of \$25,000 or more to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it specifies, unless the court makes a specific finding as to why a bond should not be required. With respect to estates of less than \$25,000, the court may in its discretion require a bond or other surety. In making a finding as to why a bond is not required, the court shall consider the person's creditworthiness, financial solvency or past financial management.

(b) A conservator who moves out of State while serving as conservator shall notify the Probate Court regarding the change of residence. The court may require a conservator who moves or locates out of State while serving as conservator to furnish a bond at that time. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. In lieu of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

(c) The following persons wishing to serve as conservators are exempt from the bonding requirements of this section:

(1) Spouses;

(2) Financial institutions authorized to do business in the State under Title 9-B, section 131, subsection 12-A, or their employees; and

(3) Persons who are already bonded in their course of business if the bond is sufficient to cover the duties of conservator.

Sec. 3. 18-A MRSA §5-507 is enacted to read:

§5-507. Durable financial power of attorney

(a) A durable financial power of attorney is a durable power of attorney by which a principal designates another as attorney-in-fact to make decisions on the principal's behalf in matters concern-

ing the principal's finances and property. In the exercise of the powers conferred under a durable financial power of attorney, an attorney-in-fact shall act as a fiduciary under the standards of care applicable to trustees as described by section 7-302. An attorney-in-fact is not authorized to make gifts to the attorney-in-fact or to others unless the durable financial power of attorney explicitly authorizes such gifts.

(b) A durable financial power of attorney must be notarized by a notary public or an attorney at law.

(c) A durable financial power of attorney must contain the following language:

"Notice to the Principal: As the "Principal," you are using this Durable Power of Attorney to grant power to another person (called the "Agent") to make decisions about your money and property and to use it on your behalf. The powers granted to the Agent are broad and sweeping. Your Agent will have the power to sell or otherwise dispose of your property and spend your money without advance notice to you or approval by you. Under this document, your Agent will continue to have these powers after you become incapacitated and you may also choose to authorize your Agent to use these powers before you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Revised Statutes, Title 18-A, sections 5-501 to 5-507 and in Maine case law. You have the right to revoke or take back this Durable Power of Attorney at any time as long as you are of sound mind. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

Notice to the Agent: As the "Agent" or "Attorney-in-fact," you are given power under this Durable Power of Attorney to make decisions about the money and property belonging to the Principal and to spend it on that person's behalf. This Durable Power of Attorney is only valid if the Principal is of sound mind when the Principal signs it. As the Agent, you are under a duty (called a "fiduciary duty") to observe the standards observed by a prudent person dealing with the property of another. The duty is explained more fully in the Maine Revised Statutes, Title 18-A, sections 5-501 to 5-507 and 7-302 and in Maine case law. As the Agent, you are not entitled to use the money for your own benefit or to make gifts to yourself or others unless the Durable Power of Attorney specifically gives you the authority to do so. As the Agent, your authority under this form will end when the Principal dies and you will not have the authority to administer the estate unless you are named in the

Principal's will. If you violate your fiduciary duty under this Durable Power of Attorney, you may be liable for damages and may be subject to criminal prosecution. If there is anything about this form or your duties under it that you do not understand, you should ask a lawyer to explain it to you."

(d) These requirements do not render ineffective a durable financial power of attorney validly executed prior to the effective date of this section.

Sec. 4. 22 MRSA §3477, sub-§1, as amended by PL 1995, c. 696, Pt. B, §3, is further amended to read:

1. Reasonable cause to suspect. When, while acting in a professional capacity, an allopathic or osteopathic physician, medical intern, medical examiner, physician's assistant, dentist, chiropractor, podiatrist, registered or licensed practical nurse, certified nursing assistant, ~~Christian Science practitioner~~, social worker, psychologist, pharmacist, physical therapist, speech therapist, occupational therapist, mental health professional, law enforcement official, coroner, emergency room personnel, ambulance attendant ~~or~~, emergency medical technician ~~or~~ unlicensed assistive personnel suspects that an adult has been abused, neglected or exploited, and has reasonable cause to suspect that the adult is incapacitated, then the professional shall immediately report or cause a report to be made to the department.

Whenever a person is required to report as a member of the staff of a medical, public or private institution, agency or facility, the staff person shall immediately make a report directly to the department.

See title page for effective date.

CHAPTER 454

H.P. 714 - L.D. 978

An Act to Improve the Efficiency of the Department of Agriculture, Food and Rural Resources

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

Sec. 1. 7 MRSA §714, sub-§1, as amended by PL 1993, c. 410, Pt. S, §3, is further amended to read:

1. Application for registration. A person may not distribute in this State a commercial feed, except a customer-formula feed, that has not been registered pursuant to this section. The application for registration must be submitted in the manner prescribed by