

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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

providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing. The department shall mail a copy of the petition to all attorneys of record when the petition is filed in court.

PART C

Sec. C-1. 18-A MRSA §9-302, sub-§(c) is enacted to read:

(c) When the department consents to the adoption of a child in its custody, the department shall immediately notify:

- (1) The District Court in which the action under Title 22, chapter 1071 is pending; and
- (2) The guardian ad litem for the child.

See title page for effective date.

CHAPTER 716

H.P. 1602 - L.D. 2228

An Act to Implement the Recommendations of the Task Force on Registration of In-home Personal Care and Support Workers

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

Sec. 1. 22 MRSA §1717 is enacted to read:

§1717. Registration of personal care agencies

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Activities of daily living" means tasks that are routinely performed by an individual to maintain bodily function, including, but not limited to, mobility; transfers in position among sitting, standing and prone positions; dressing; eating; toileting; bathing; and personal hygiene assistance.

B. "Hires and employs" means recruits, selects, trains, declares competent, schedules, directs, defines the scope of the positions of, supervises or terminates individuals who provide personal care.

C. "Personal care agency" means a business entity or subsidiary of a business entity that is not otherwise licensed by the Division of Licensing and Certification and that hires and employs unlicensed assistive personnel to provide assistance with activities of daily living to individuals in the places in which they reside, either permanently or temporarily. An individual who hires and employs unlicensed assistive personnel to provide care for that individual is not a personal care agency.

D. "Unlicensed assistive personnel" means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living centers, residential care facilities, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants.

2. Registration of personal care agencies. Beginning August 1, 1998, a personal care agency not otherwise licensed by the department shall register with the department. The annual registration fee is \$25.

3. Prohibited contracting and employment. A personal care agency may not hire under a long-term contract or employ permanently as unlicensed assistive personnel an individual who has worked as a certified nursing assistant and has been the subject of an annotation by the state survey agency for a substantiated complaint or conviction of abuse, neglect or misappropriation of funds in a health care setting.

4. Penalty. A person who operates a personal care agency without registering with the department commits a civil violation for which a forfeiture may be adjudged of \$500 per day of operations.

Sec. 2. Report required. The Commissioner of Human Services shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on or before January 1, 1999 on the feasibility of establishing a statewide system for checking the criminal histories of unlicensed assistive personnel and a registry for maintaining records of criminal convictions and substantiated complaints of abuse, neglect or misappropriation of funds in a health care setting by the year 2000. The following characteristics must be considered: the system for checking for criminal convictions should be nationwide; the registry should be

statewide; the cost should be reasonable; there should be a single point of access for the public; funding must be provided by the Department of Human Services and the State Bureau of Identification within the Department of Public Safety; and the Department of Human Services shall adopt rules regarding the system and the registry.

See title page for effective date.

CHAPTER 717

H.P. 1643 - L.D. 2275

An Act to Modify the Law Pertaining to Personal Sports Mobile Franchises

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

Sec. 1. 10 MRSA §1243, sub-§3, ¶B, as enacted by PL 1997, c. 473, §3, is amended to read:

B. To coerce or attempt to coerce any personal sports mobile dealer to enter into any agreement with a manufacturer or an officer, agent or other representative of a manufacturer, or to do any other act prejudicial to that dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer and that dealer; however, notice in good faith to any personal sports mobile dealer of that dealer's violation of any terms or provisions of the franchise or contractual agreement, or any good faith attempt by the manufacturer to enforce the terms or provisions of the franchise or contractual agreement, does not constitute a violation of this chapter;

Sec. 2. 10 MRSA §1243, sub-§3, ¶O, as enacted by PL 1997, c. 473, §3, is amended to read:

O. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, unless good cause exists. Good cause exists for the purposes of a termination, cancellation, nonrenewal or noncontinuance:

(1) When there is a failure by the new personal sports mobile dealer to comply with a provision of the franchise that is both reasonable and of material significance to the franchise relationship so long as compliance on the part of the new personal sports mobile dealer is reasonably possible and the manufacturer first acquired actual

or constructive knowledge of the failure not more than 180 days prior to the date on which notification is given pursuant to paragraph Q;

(2) If the failure by the new personal sports mobile dealer, as described in subparagraph (1), relates to the performance of the new personal sports mobile dealer in sales or service. In this case, good cause is the failure of the new personal sports mobile dealer to effectively carry out the performance provisions of the franchise if:

(a) The new personal sports mobile dealer was apprised by the manufacturer in writing of that failure; the notification stated that notice was provided of failure of performance pursuant to this subsection; and the new personal sports mobile dealer was afforded a reasonable opportunity for a period of not less than ~~6~~ 4 months to exert good faith efforts to carry out the performance provisions;

(b) The failure continued within the period that began not more than ~~180~~ 120 days before the date notification of termination, cancellation or nonrenewal was given pursuant to paragraph Q; and

(c) The new personal sports mobile dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to that dealer;

(3) When the dealer and the manufacturer agree not to renew the franchise; or

(4) When the manufacturer discontinues production or distribution of any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;

Sec. 3. 10 MRSA §1243, sub-§3, ¶R, as enacted by PL 1997, c. 473, §3, is amended to read:

R. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer without providing fair and reasonable compensation to the licensed new personal sports mobile dealer for:

(1) All unsold new model personal sports mobile inventory of the current and previous 2 model years purchased from the manufacturer;