

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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
2001

Sec. 3. Commissioner of Transportation and Executive Director of Maine Turnpike Authority shall replace signs. The Commissioner of Transportation shall replace any sign on an interstate highway other than a sign that is located on the Maine Turnpike that is in violation of the Maine Revised Statutes, Title 1, section 1102 with a sign that contains proper place names no later than 30 days after the effective date of this Act. The Executive Director of the Maine Turnpike Authority shall replace a sign located on the Maine Turnpike that is in violation of Title 1, section 1102 with a sign that contains proper place names no later than 30 days after the effective date of this Act.

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

Effective May 23, 2001.

CHAPTER 245

H.P. 1184 - L.D. 1607

An Act to Further Protect the Rights of Persons with Mental Retardation or Autism

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

Sec. 1. 34-B MRSA §5605, sub-§13, as amended by PL 1993, c. 326, §9, is further amended to read:

13. Behavioral treatment. ~~Behavior modification~~ Behavioral treatment of persons ~~receiving services~~ a person with mental retardation or autism is governed as follows.

A. A person ~~receiving services with mental retardation or autism~~ may not be subjected to a treatment program to eliminate ~~bizarre or unusual~~ dangerous or maladaptive behavior without first being examined by a physician to rule out the possibility that the behavior is organically caused.

A-1. Behavioral treatment programs may contain both behavior modification and behavior management components. Behavior modification components consist of interventions designed to assist a person with mental retardation or autism to learn to replace dangerous or maladaptive behavior with safer and more adaptive behavior. Behavior management components consist of systematic strategies to prevent the occurrence of dangerous or maladaptive behaviors

by minimizing or eliminating environmental or other factors that cause those behaviors.

B. Treatment programs involving the use of noxious or painful stimuli or other aversive or severely intrusive techniques may be used only to correct behavior more harmful to the person ~~receiving services with mental retardation or autism~~ than is the treatment program and only:

(1) On the recommendation of a physician, psychiatrist or psychologist; and

(2) With the approval, following a case-by-case review, of the chief administrative officer of the residential facility ~~and;~~ a representative of the person's residence, day program or work site; an advocate of the department; a representative of the Division of Mental Retardation; and a representative of the Consumer Advisory Board.

Sec. 2. 34-B MRSA §5605, sub-§14, ¶C, as amended by PL 1993, c. 326, §9, is further amended to read:

C. Physical restraints may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety.

Sec. 3. 34-B MRSA §5605, sub-§14, ¶D-1 is enacted to read:

D-1. A device whose effect is to reduce or inhibit a person's movement in any way but whose purpose is to maintain or ensure the safety of the person is not considered behavioral treatment. Such a device may be used only in conformity with applicable state and federal rules and regulations, when recommended by a qualified professional after approval of the person's service plan and when use of the device is approved by the chief administrative officer of the residential care facility; a representative of the person's residence, day program or work site; an advocate of the department; a representative of the Division of Mental Retardation; and a representative of the Consumer Advisory Board.

Sec. 4. 34-B MRSA §5605, sub-§14, ¶E, as amended by PL 1993, c. 326, §9, is further amended to read:

E. Daily reports on the use of restraints must be made to the appropriate chief administrative officer of the facility. The report must be reported to the department in any manner required by the department.

(1) The reports must summarize all cases involving the use of restraints, the type of restraints used, the duration of usage and the reasons for the usage.

(2) A monthly summary of the reports must be relayed to the Office of Advocacy.

See title page for effective date.

CHAPTER 246

S.P. 542 - L.D. 1688

An Act to Amend the Personal Sports Mobile Franchise Law

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

Sec. 1. 10 MRSA §1244, sub-§3 is enacted to read:

3. Mediation. A franchisee may not bring an action for recovery of damages or for equitable relief under this section until a franchisee has served upon the franchisor a written demand for nonbinding mediation and either the parties have engaged in such mediation in this State with an independent mediator or 60 days have passed from the franchisor's receipt of notice of mediation, whichever occurs sooner. The service of the written notice of mediation tolls the running of any applicable statute of limitations for the subsequent 60-day period. A franchisor may not establish a new personal sports mobile dealership or relocate an existing sports mobile dealership within or into the relevant market area during this 60-day period. Notwithstanding any agreement or requirement to engage in nonbinding mediation, at the conclusion of the proceedings, the franchisee is entitled to file an action in any court in this State in accordance with section 1250-I. The results of nonbinding mediation are not admissible in the action.

Sec. 2. 10 MRSA §1250-F, sub-§1, as amended by PL 1997, c. 717, §5, is further amended to read:

1. Civil remedies. Any personal sports mobile dealer or franchisee who has been damaged by reason of a violation of a provision of this chapter may bring an action to enjoin that violation and to recover any damages arising from that violation. A franchisee or personal sports mobile dealer who suffers financial loss of money or property, real or personal, or who has otherwise been adversely affected as a result of an unfair method of competition, an unfair or deceptive act or a violation of a provision of this chapter may bring an action for damages and equitable relief, including injunctive relief. When the franchisee or

dealer prevails, the court shall award attorney's fees to the franchisee or dealer regardless of the amount in controversy and assess costs against the opposing party. A final judgment, order or decree rendered against a person in ~~any~~ a civil or administrative proceeding under this chapter or in ~~any~~ a civil, criminal or administrative proceeding under the federal antitrust laws, the Federal Trade Commission Act, or any other part of the Maine Revised Statutes is prima facie evidence against that person subject to the conditions set forth in the federal antitrust laws, 15 United States Code, Section 16.

See title page for effective date.

CHAPTER 247

H.P. 1080 - L.D. 1449

An Act to Ensure Municipal Authority over Sludge and Septage Land Spreading Sites

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

Sec. 1. 38 MRSA §1303-C, sub-§29, as amended by PL 1989, c. 869, Pt. A, §5 and affected by §21, is further amended to read:

29. Solid waste. "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including, but not limited to, rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material and landscape refuse, but does not include hazardous waste, biomedical waste, ~~septic tank sludge~~ septage or agricultural wastes. The fact that a solid waste or constituent of the waste may have value or other use or may be sold or exchanged does not exclude it from this definition.

Sec. 2. 38 MRSA §1304, sub-§17 is enacted to read:

17. Sludge and septage guidance. The commissioner shall develop guidance to municipalities regarding the regulation of septage and sludge land application by municipalities. The guidance must include information regarding site location restrictions, testing and enforcement actions that may be undertaken by a municipality and municipal roles and responsibilities under section 1310-U.

Sec. 3. Report on sludge and septage land application guidance. By January 30, 2002, the Department of Environmental Protection is directed to report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the status of the development of guidance to