

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 TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

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
2002

Ombudsman. In exercising the administration of the office, the ombudsman shall formulate policies, establish organizational and operational procedures and exercise general supervision. The ombudsman shall employ, with the approval of the Governor and subject to the Civil Service Law, those assistants as are necessary to carry out this chapter. The ombudsman shall adopt a seal for use in the official business of the office. The ombudsman has custody and control of the facilities provided for the administration of this chapter.

2. Advice. The ombudsman shall advise the Governor, the Legislature and the directors of other appropriate state departments or agencies on appropriate steps needed to coordinate state policy and state actions on commerce and other relations with individuals, businesses and governmental entities in Canada.

3. Representation. The ombudsman shall represent the State at the national level for trade matters between the United States and Canada that involve the State.

4. Investigation; resolution of complaints; negotiation. The ombudsman shall answer inquiries from citizens and businesses in this State and investigate, advise and work toward resolution of complaints that arise concerning trade issues. The ombudsman may negotiate on behalf of businesses in this State, with their consent, with individuals, businesses and governmental entities of Canada to secure fair trade treatment of products and services of this State.

5. Biennial report. The ombudsman shall report biennially to the Governor and Legislature facts and recommendations related to the work and needs of the Office of the Maine-Canada Trade Ombudsman.

6. Rules. The ombudsman may adopt rules necessary to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter II-A.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

EXECUTIVE DEPARTMENT

Administration - Executive Governor's Office

Initiative: Provides for the creation of the Office of the Maine-Canada Trade Ombudsman.

General Fund	2001-02	2002-03
Positions - Legislative Count	(0.000)	(1.000)
Personal Services	\$0	\$28,687
All Other	0	6,500
General Fund Total	\$0	\$35,187

Sec. 3. Effective date. This Act takes effect January 1, 2003.

Effective January 1, 2003.

CHAPTER 644

H.P. 1474 - L.D. 1975

An Act Concerning Student Threats

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 20-A MRSA §1001, sub-§15, ¶F, as enacted by PL 1999, c. 351, §2, is amended to read:

F. Establish policies and procedures concerning the removal of disruptive or violent students or students threatening death or bodily harm to others from a classroom or a school bus, as well as student disciplinary and placement decisions, when appropriate; and

See title page for effective date.

CHAPTER 645

H.P. 1523 - L.D. 2027

An Act Regarding Child Care Facility Laws

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

Sec. 1. 17 MRSA §2871, sub-§1, as amended by PL 1997, c. 494, §1 and affected by §15, is further amended to read:

1. Day care center. "Day care center" means a ~~day child care center~~ facility, as defined in Title 22, section 8301-A, subsection ~~1-A~~, paragraph ~~A~~ B.

Sec. 2. 22 MRSA §7701, sub-§2, as amended by PL 1997, c. 494, §5 and affected by §15, is further amended to read:

2. Facility. As used in this subtitle, the word "facility" means any of the places defined in section

8001, 8101, 8201 or 8301-A, subsection ~~4~~ 1-A, paragraph ~~A~~ B.

Sec. 3. 22 MRSA §7801, sub-§1, ¶E, as amended by PL 1987, c. 389, §2, is further amended to read:

E. A ~~day~~ child care facility licensed under section 8301-A, subsection 2; or

Sec. 4. 22 MRSA §7801, sub-§1, ¶F, as amended by PL 1987, c. 389, §3, is repealed.

Sec. 5. 22 MRSA c. 1673 is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 1673

CHILD CARE FACILITIES

Sec. 6. 22 MRSA §8301-A, as amended by PL 1999, c. 363, §§4 and 5, is further amended to read:

§8301-A. Licensure of child care facilities; certification of home day care providers

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

A. "Day care center" means:

~~(1) A house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 13 or more children under 13 years of age;~~

~~(2) A facility that is not part of a person's own home where there are between 3 and 12 children being cared for; or~~

~~(3) Any location or locations that are operated as a single day care program or by a single person or persons when there are more than 12 children being cared for.~~

~~"Day care center" does not include a facility operated as a nursery school, a facility operated by a home day care provider or a summer camp established solely for recreational and educational purposes or a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of Education in accordance with Title 20-A.~~

~~B. "Home day care provider" means a person who provides day care in that person's home on a regular basis, for consideration, for 3 to 12 chil-~~

~~ren under 13 years of age who are not the children of the provider.~~

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

A. "Child care center" means:

(1) A house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 13 or more children under 13 years of age; or

(2) Any location or locations operated as a single child care program or by a person or persons when there are more than 12 children being cared for.

B. "Child care facility" means a child care center, small child care facility or nursery school. "Child care facility" does not include a facility operated by a home day care provider, a summer camp established solely for recreational and educational purposes or a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of Education in accordance with Title 20-A.

C. "Home day care provider" means a person who provides day care in that person's home on a regular basis, for consideration, for 3 to 12 children under 13 years of age who are not the children of the provider.

D. "Nursery school" means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program that provides care for 3 or more children 33 months of age or older and under 8 years of age, provided that:

(1) No session conducted for the children is longer than 3 1/2 hours in length;

(2) No more than 2 sessions are conducted per day;

(3) Each child in attendance at the nursery school attends only one session per day; and

(4) No hot meal is served to the children.

"Nursery school" does not include any facility operated as a child care center or small child care facility licensed under subsection 2, a summer camp established solely for recreational and edu-

ational purposes or a public or private school in the nature of a kindergarten approved by the Commissioner of Education, in accordance with Title 20-A.

E. "Small child care facility" means a house or other place, not the residence of the operator, in which a person or combination of persons maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 3 to 12 children under 13 years of age.

2. Child care facility licensure. The owner or operator of a ~~day child care center~~ facility shall pay the licensing fee required under section 8303-A. A ~~day child care center~~ facility must be licensed under this chapter and must comply with the rules adopted by the commissioner under section 8302-A and the fire safety requirements of section 8304-A. Except as otherwise provided, a nursery school must meet the requirements of this chapter and chapter 1675.

3. Home day care provider certification. A home day care provider shall pay the certification fee required under section 8303-A. A home day care provider must be certified under this chapter and shall comply with the rules adopted by the commissioner under section 8302-A and the fire safety requirements of section 8304-A.

4. Complaints. Upon receipt of a complaint about a licensed ~~day child care center~~ facility or a certified home day care provider and if the department has reasonable cause to suspect that a violation of the licensure or certification requirements has occurred, the department may investigate the complaint and enter the premises at any reasonable time for the purposes of the investigation.

5. Administrative suspension. Whenever conditions exist that immediately jeopardize the health and safety of children, the commissioner may issue an order of closure, which suspends the certification of the home day care provider or the ~~day child care center~~ facility license for up to 10 days, pending further investigation or prior to obtaining an order of emergency suspension from the court. The department shall require that an order of closure be posted at the facility and made public as it determines to be most appropriate for parents and other potential customers.

6. Temporary license. Whenever a certified home day care provider or licensed ~~day child care center~~ facility moves to a new location the department may issue a temporary certificate or license, valid pending final action on the application for the new location by the department, when:

A. All applicable standards have been met except a requirement that is dependent on the action of an agency of ~~state government~~ State Government or a contractor of that agency; and

B. Through no action by the applicant that causes a significant delay, timely issuance of a provisional or full license has been delayed by the agency or contractor.

7. Injunctive relief. The department may seek an injunction to require compliance with the provisions of this section or rules adopted pursuant to this section.

8. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

Sec. 7. 22 MRSA §8302-A, as corrected by RR 1997, c. 1, §21, is amended to read:

§8302-A. Rules for child care facilities and home day care providers

The commissioner shall adopt rules for ~~day child care centers~~ facilities and home day care providers according to this section. Nursery schools are subject to the requirements of chapter 1675 and this section, except that subsection 1, paragraph F does not apply to nursery schools.

1. Rules for child care facilities. Rules for ~~day child care centers~~ facilities must include, but are not limited to, rules pertaining to the following:

- A. Child to staff ratios;
- B. The health and safety of the children and staff, including training on communicable diseases;
- C. Water for drinking and cooking;
- D. Wastewater;
- E. Rabies vaccinations for pets;
- F. The quality of the program provided;
- G. The age, criminal record and personal history of the ~~day care~~ provider of care for children and staff members;
- H. The administration of medication; and
- I. Licensing procedures.

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Rules for home day care providers. Rules for home day care providers must include, and are limited to, rules pertaining to the following:

- A. Cardiopulmonary resuscitation;
- B. Water for drinking and cooking;
- C. Wastewater;
- D. Rabies vaccinations for pets;
- E. Recording the times, reasons and numbers of children involved when more than 12 children are cared for;
- F. Ongoing training for providers on health and safety issues, including training on communicable diseases. This training must be offered at times that are convenient to the providers;
- G. Child to staff ratios;
- H. Health and safety of the children and staff;
- I. Procedures for waivers of rules and for suspension and revocation of certification; and
- J. The age, criminal record and personal history of the home day care provider, staff and members of the household.

Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A and rules adopted pursuant to paragraphs G to J are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 8. 22 MRSA §8304-A, sub-§1, as amended by PL 1997, c. 728, §13, is further amended to read:

1. Inspection required. As an ongoing condition of licensure or certification, the Commissioner of Public Safety must provide at least biennially to the department a written statement that the ~~day care center, nursery school~~ child care facility or certified home day care provider complies with applicable fire safety rules adopted pursuant to Title 25, section 2452. The Commissioner of Public Safety shall adopt rules in accordance with the Maine Administrative Procedure Act to implement this subsection. The rules must provide for at least the following.

- A. The Commissioner of Public Safety shall issue a fire safety technician certificate to any person who successfully completes a training course established by the Department of Public Safety. A person who receives a fire safety technician certificate pursuant to this paragraph may perform fire safety inspections under this section.

B. In addition to ongoing license or certification requirements, inspection and certification are required under this section whenever a ~~day care center, nursery school~~ child care facility or certified home day care provider changes or augments a heating system or makes major structural alterations to the ~~center~~ facility or home.

Sec. 9. 22 MRSA §8401, as amended by PL 1989, c. 700, Pt. A, §98, is further amended to read:

§8401. Definitions

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

1. Children. ~~"Children" means persons 7 years of age and under who are not related by blood or marriage to or who have not been legally adopted by the licensee or administrator of the nursery school which the children attend.~~

2. Nursery school. ~~"Nursery school" means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program which provides care for 3 or more children, provided that: has the same meaning as in section 8301-A, subsection 1-A, paragraph D.~~

~~A. No session conducted for the children is longer than 3 1/2 hours in length;~~

~~B. No more than 2 sessions are conducted per day;~~

~~C. Each child in attendance at the nursery school attends only one session per day; and~~

~~D. No hot meal is served to the children.~~

~~This term does not include any facility operated as a day care center, a summer camp established solely for recreational and educational purposes or a public or private school in the nature of a kindergarten approved by the Commissioner of Education, in accordance with Title 20, section 911.~~

Sec. 10. 22 MRSA §8402, sub-§3, as amended by PL 1977, c. 497, §8, is further amended to read:

3. Requirements. In order to receive a license from the department, a nursery school shall must meet the requirements of chapter 1673 applicable to nursery schools and the following requirements:

- A. ~~Each licensee, administrator or other staff member of the nursery school, who provides care for the children, shall be declared, annually, by a licensed physician to be free from communicable~~

~~disease. The department shall adopt rules regarding the health of staff as required to protect the health and safety of the children. The rules must include a requirement that every 2 years each licensee, administrator or other staff member of the nursery school who provides care for children be declared free from communicable disease by a licensed physician, except that this requirement may be waived for a person who objects on the grounds of sincerely held religious or philosophical belief. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

B. Drinking water ~~which~~ that is taken from sources other than a public water system ~~shall~~ must pass a test for bacteria, nitrates and nitrites every year and ~~shall~~ must pass a partial chemical test every 4 years.

C. The nursery school ~~shall carry~~ carries minimum liability insurance of \$100,000 per person and \$300,000 per occurrence.

~~D. During any nursery school session there shall be at least one adult present for every 12 children. When only one adult is present, another responsible adult shall be on call and available in case of any emergency.~~

E. The nursery school ~~shall meet~~ meets, annually, the fire safety requirements specified in section 8403, subsection 2.

~~F. The nursery school shall comply with rules and regulations for the administration of medication as established by the department.~~

Sec. 11. 22 MRSA §8402, sub-§6, as enacted by PL 1975, c. 709, §2, is amended to read:

6. Relationship to licensing of child care facilities. ~~No facility licensed as a A nursery school shall be required to must be licensed as a day child care facility; but any facility licensed as a nursery school may also be licensed as a day care facility, if the nursery school complies with the law and rules applicable to day care facilities under chapter 1673.~~

See title page for effective date.

CHAPTER 646

H.P. 1524 - L.D. 2028

An Act to Provide Retirement Equity for Capital Security Officers

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

Whereas, the 1998 Special Plan was enacted to provide appropriate retirement benefits to state employees engaged in public safety and law enforcement activities; and

Whereas, as a matter of equity capital security officers should be eligible for the same retirement benefits under the 1998 Special Plan as other state employees engaged in public safety and law enforcement activities; and

Whereas, eligibility to participate in the 1998 Special Plan will assist in the recruitment and retention of capital security officers in this period of heightened awareness of the need for qualified security employees; 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. 5 MRSA §17851-A, sub-§1, ¶L, as enacted by PL 2001, c. 409, §2, is amended to read:

L. Oil and hazardous materials emergency response workers in the employment of the Department of Environmental Protection, Division of Response Services who participate in a standby rotation on January 1, 2002 or are hired thereafter; and

Sec. 2. 5 MRSA §17851-A, sub-§1, ¶M is enacted to read:

M. Capital security officers in the employment of the Department of Public Safety, Bureau of Capital Security on July 1, 2002 or hired thereafter.

Sec. 3. 5 MRSA §17851-A, sub-§2, as amended by PL 2001, c. 409, §3, is further amended by amending the first paragraph to read:

2. Qualification for benefits. A member employed in any one or a combination of the capacities specified in subsection 1 after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; after June 30, 2002 for employees identified in paragraph M; and any employee identified in subsection 1, paragraph L,