

MAINE STATE LEGISLATURE

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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

F. The Commissioner of Marine Resources or the commissioner's designee;

G. The Director of the State Planning Office or the director's designee;

H. The Commissioner of Transportation or the commissioner's designee;

I. The District Chief of the United States Geological Survey Water Resources Division Maine District Office;

J. The Meteorologist-in-Charge of the National Weather Service Forecast Office in Gray or the designee of the Meteorologist-in-Charge;

K. Representatives from the major hydroelectric power generators, as determined by the cochairs of the commission; and

L. A representative of the public, appointed by the Governor.

3. Chair. The District Chief of the United States Geological Survey Water Resources Division Maine District Office and the Adjutant General or the Adjutant General's designee shall act as cochairs of the commission.

4. Terms of office. The term of office of the public member is 5 years. The public member may be removed from office for cause by the Governor. Members from the State Government or Federal Government shall serve a term coincident with their governmental position. The term of a representative from the major hydroelectric power generators is 5 years.

5. Voting. A quorum of at least 7 members must be present for voting.

6. Administrative provision. The Maine Emergency Management Agency shall administer the affairs and activities of the commission.

7. Records. The commission shall keep accurate records of its proceedings and shall file them with the Maine Emergency Management Agency.

8. Compensation. Members of the commission are not entitled to receive compensation.

9. Meetings. The commission shall meet at least once per calendar year at the call of either of the cochairs to review hydrologic conditions prior to the spring snowmelt and runoff for the purpose of issuing an advisory statement on the potential for major river flooding. Either of the cochairs may call additional meetings as needed.

10. Powers and duties. The commission has the power and duty only to:

A. Advise the department and the Governor on issues of flow within the State's rivers and streams;

B. Assist in communication of river flow data between dam operators, river basin managers, state agencies and federal agencies; and

C. Administer the State's cooperative hydrologic monitoring program in cooperation with the United States Geological Survey.

See title page for effective date.

CHAPTER 663

H.P. 1283 - L.D. 1746

An Act Regarding Workers' Compensation Benefits for Firefighters, Rescue Workers and Safety Workers Who Contract Certain Communicable Diseases

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. 39-A MRSA §328-A is enacted to read:

§328-A. Communicable disease contracted by emergency rescue or public safety worker

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

A. "Body fluids" means blood and body fluids containing visible blood and other potentially infectious materials, as defined in a regulation of the Occupational Safety and Health Administration, 29 Code of Federal Regulations, 1910.1030 (2001). For purposes of potential transmission of meningococcal meningitis or tuberculosis, "body fluids" includes respiratory, salivary and sinus fluids, including droplets, sputum and saliva, mucus and other fluids through which infectious

airborne organisms can be transmitted between persons.

B. "Corrections officer" has the same meaning as in Title 25, section 2801-A, subsection 2.

C. "Emergency medical services person" means a person licensed as an emergency medical services person under Title 32, chapter 2-B who is employed by, or provides voluntary service to, an ambulance service as defined in Title 32, section 83 or a nontransporting emergency medical service as defined in Title 32, section 83.

D. "Emergency rescue or public safety worker" means a person who:

(1) Is a firefighter, emergency medical services person, law enforcement officer or corrections officer; and

(2) In the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis or tuberculosis.

E. "Employer" includes an entity for which a person provides volunteer services.

F. "Firefighter" means an active member of a municipal fire department or a volunteer fire association as defined in Title 30-A, section 3151.

G. "Hepatitis" means hepatitis A, hepatitis B, hepatitis C or any other strain of hepatitis generally recognized by the medical community.

H. "High risk of occupational exposure" means a risk that is incurred because a person subject to the provisions of this section, in performing the basic duties associated with that person's employment:

(1) Provides emergency medical treatment in a nonhealth-care setting where there is a potential for the transfer of body fluids between persons;

(2) At the site of an accident, fire or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;

(3) Engages in the pursuit, apprehension and arrest of persons suspected of violating the law and, in performing such duties, risks exposure to body fluids; or

(4) Is responsible for the custody and physical restraint, when necessary, of prisoners or inmates within a prison, jail or other criminal detention facility or while on work detail outside the facility or while being transported and, in performing such a duty, risks exposure to body fluids.

I. "Law enforcement officer" has the same meaning as in Title 25, section 2801-A, subsection 5.

J. "Occupational exposure," in the case of hepatitis, meningococcal meningitis or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.

2. Presumption. There is a rebuttable presumption that an emergency rescue or public safety worker who contracts hepatitis, meningococcal meningitis or tuberculosis has a disease arising out of and in the course of employment, that sufficient notice of the disease has been given and that the disease was not occasioned by the willful intention of the emergency rescue or public safety worker to cause self-injury or injury to another if the emergency rescue or public safety worker complies with the requirements of subsections 3 to 5.

3. Written verification. In order to qualify for the presumption set forth in subsection 2, an emergency rescue or public safety worker must sign a written affidavit declaring that, to the best of the person's knowledge and belief:

A. In the case of a medical condition caused by hepatitis, the person has not:

(1) Been exposed, through transfer of body fluids, to any person known to have sickness or medical conditions derived from hepatitis outside the scope of the person's employment as an emergency rescue or public safety worker;

(2) Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with the person's employment as an emergency rescue or public safety worker, or received any blood products for the treatment of a coagulation disorder;

(3) Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control and Prevention or the Surgeon General of the United States, or had sexual relations with a person known by the emergency rescue or public safety worker to have engaged in

such unsafe sexual practices or other high-risk behavior; or

(4) Used intravenous drugs not prescribed by a physician.

B. In the case of meningococcal meningitis, in the 10 days immediately preceding diagnosis the person was not exposed outside the scope of the person's employment as an emergency rescue or public safety worker to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.

C. In the case of tuberculosis, the person has not been exposed, outside the scope of the person's employment as an emergency rescue or public safety worker, to any person known by the emergency rescue or public safety worker to have tuberculosis.

A person who has tested negative for hepatitis or tuberculosis at the time of employment or during employment as an emergency rescue or public safety worker may satisfy the affidavit requirement in paragraph A, subparagraph (2) or paragraph C by making the required declaration with respect to the period of time since the person's last negative test for hepatitis or tuberculosis, respectively.

4. Required medical tests; preemployment physical. In order to be entitled to the presumption set forth in subsection 2:

A. An emergency rescue or public safety worker, at the time of or during employment as an emergency rescue or public safety worker and prior to diagnosis, must have undergone standard, medically acceptable tests for evidence of the disease for which the presumption is sought or evidence of the medical conditions derived from the disease, which tests failed to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis and does not apply to an emergency rescue or public safety worker employed or serving in that capacity on the effective date of this section; and

B. On or after the effective date of this section, the emergency rescue or public safety worker has undergone a preemployment physical examination that tested for and failed to reveal any evidence of hepatitis or tuberculosis if the person's employer requires such preemployment physical examination and tests.

5. Immunization. Whenever any standard, medically recognized vaccine or other form of immunization or other prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically

indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices for the Centers for Disease Control and Prevention, an emergency rescue or public safety worker may be required by the worker's employer to undergo the immunization or other prophylaxis unless the worker's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the worker's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety worker to undergo such immunization or other prophylaxis disqualifies the worker from the benefits of the presumption.

6. Record of exposures. To the extent required by any state or federal law or regulation:

A. An employer shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety worker in its employ to the diseases described in this section and shall immediately notify the employee of that exposure; and

B. An emergency rescue or public safety worker shall file an incident or accident report with the worker's employer of each instance of known or suspected occupational exposure to hepatitis, meningococcal meningitis or tuberculosis.

7. Liability if services performed for more than one employer. If an emergency rescue or public safety worker was employed by more than one employer, the employer in whose employ the person was last injuriously exposed to the risk of the disease contracted and the insurer on the risk at the time of that last exposure, if any, are the only entities liable for the disease.

8. Effect of presumption on life and disability insurance coverage. The presumption set forth in subsection 2 does not apply in determining eligibility for life or disability benefits unless otherwise provided in the insurance contract.

9. Effect of presumption on disability retirement. The presumption set forth in subsection 2 is effective for purposes of determining whether a disability is work-related for purposes of determining eligibility for disability retirement in the Maine State Retirement System. This presumption does not affect any eligibility requirement other than the requirement that the disability be work-related.

See title page for effective date.
