

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2004

Sec. 3. 35-A MRSA §3203, sub-§4, ¶G is enacted to read:

G. Must provide at least once annually to the consumer any information disclosures required by the commission by rule pursuant to subsection 3.

Sec. 4. 35-A MRSA §3203, sub-§4-A, ¶F, as enacted by PL 1999, c. 657, §19, is amended to read:

~~F. May not initiate a telephone solicitation call to a consumer who has notified the competitive electricity provider of the consumer's wish not to receive telephone solicitation calls made by or on behalf of the competitive electricity provider.~~ Must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; and

Sec. 5. 35-A MRSA §3203, sub-§4-A, ¶G, as enacted by PL 1999, c. 657, §19, is repealed.

See title page for effective date.

CHAPTER 559

H.P. 1284 - L.D. 1762

An Act To Amend the Maine Emergency Medical Services Act of 1982

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

Sec. 1. 32 MRSA §85, sub-§6, as amended by PL 2001, c. 697, Pt. C, §1, is further amended to read:

6. Ambulance operator course. By January 1, ~~2005~~ 2007, a person whose job description includes operating an ambulance in an emergency mode or transporting a patient must possess certification of successful completion of a basic ambulance vehicle operator course, or a course that has been approved by the board as an equivalent, in order to operate an ambulance in an emergency mode or to transport a patient. This requirement applies to all paid and volunteer ambulance operators and transporters. This requirement is in addition to vehicle operator requirements of Title 29-A or other law. A person whose job description includes operating an ambulance in an emergency mode or transporting a patient who successfully completes a basic ambulance vehicle operator course or a course that has been approved by the board as an equivalent may apply to the board for reimbursement for the cost of the course.

Sec. 2. 32 MRSA §90-A, as amended by PL 2001, c. 229, §§5 to 8, is further amended to read:

§90-A. Licensing actions

1. Disciplinary proceedings and sanctions. The board or, as delegated, its subcommittee or staff, shall investigate a complaint on its own motion or upon receipt of a written complaint filed with the board regarding noncompliance with or violation of this chapter or of any rules adopted by the board. Investigation may include an informal conference before the board, its subcommittee or staff to determine whether grounds exist for suspension, revocation or denial of a license or for taking other disciplinary action pursuant to this chapter. The board, its subcommittee or staff may subpoena witnesses, records and documents, including records and documents maintained by a health care facility or other service organization or person related to the delivery of emergency medical services, in any investigation or hearing it conducts.

2. Notice. The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but in no event later than 60 days after the board or staff receives the initial pertinent information. The licensee has the right to respond within 30 days in all cases except those involving an emergency denial, suspension or revocation, as described in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter ~~5~~ 5. If the licensee's response to the complaint satisfies the board or staff that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

3. Informal conference. If, in the opinion of the board, its subcommittee or staff, the factual basis of the complaint is or may be true and the complaint is of sufficient gravity to warrant further action, the board or staff may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference must be conducted in executive session of the board, subcommittee or staff, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal administrative or judicial hearing unless all parties consent. The licensee may, without prejudice, refuse to participate in an informal conference if the licensee prefers to request an adjudicatory hearing. If the licensee participates in the informal conference, the licensee waives the right to object to a participant at the hearing who participated at the informal conference.

4. Further action. If the board, its subcommittee or staff finds that the factual basis of the complaint

is true and is of sufficient gravity to warrant further action, it may take any of the following actions.

A. The board, its subcommittee or staff may ~~enter into~~ negotiate a consent agreement, with the ~~consent of the~~ licensee, that fixes the period and terms of probation necessary to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Department of the Attorney General.

B. If a licensee voluntarily surrenders a license, the board, its subcommittee or staff may negotiate stipulations necessary to ensure protection of the public health and safety and the rehabilitation or education of the licensee. These stipulations may be set forth only in a consent agreement signed by the board, the licensee and the Department of the Attorney General.

C. If the board, its subcommittee or staff concludes that modification, nonrenewal, ~~nonissuance~~ or suspension pursuant to section 88, subsection 3 of a license or imposition of a civil penalty pursuant to section 88, subsection 3 is in order, the board shall so notify the ~~applicant licensee~~ licensee and inform the ~~applicant licensee~~ licensee of the ~~applicant licensee's~~ licensee's right to request an adjudicatory hearing. If the ~~applicant licensee~~ licensee requests an adjudicatory hearing in a timely manner, the adjudicatory hearing must be held by the board in accordance with Title 5, chapter 375, subchapter ~~IV~~ 4. If the ~~applicant licensee~~ licensee wishes to appeal the final decision of the board, the ~~applicant licensee~~ licensee shall file a petition for review with the Superior Court within 30 days of receipt of the board's decision. Review under this paragraph must be conducted pursuant to Title 5, chapter 375, subchapter ~~VII~~ 7.

D. Except in the specific circumstances where Title 5, section 10004 may be invoked, if the board or its staff concludes that suspension beyond the authority conferred by section 88 or revocation of the license is in order, the board or its staff shall request the Attorney General to file a complaint in the District Court in accordance with Title 4, chapter 5 and the Maine Administrative Procedure Act to commence either full or emergency proceedings.

5. Grounds for licensing action. A decision to take action against any applicant or licensee pursuant to this chapter or any rules adopted pursuant to this chapter, including, but not limited to, a decision to impose a civil penalty or to refuse to issue or renew a license or to modify, suspend or revoke a license of a

person, service or vehicle, may be predicated on the following grounds:

A. Fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued;

B. Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of the licensee's patients;

C. A professional diagnosis of a mental or physical condition that has affected or is likely to affect the licensee's performance in a manner that endangers the health or safety of the licensee's patients;

D. Aiding or abetting the practice of emergency care by a person not duly licensed under this chapter who purports to be so;

E. Incompetent professional practice as evidenced by:

(1) Demonstrated inability to respond appropriately to a client, patient or the general public; or

(2) Inability to apply principles, skills or knowledge necessary to successfully carry out the practice for which the licensee is licensed;

F. Violation of any reasonable standard of professional behavior, conduct or practice that has been established in the practice for which the licensee is licensed;

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement, conviction of a crime that relates directly to the practice for which the licensee is licensed, conviction of a crime for which incarceration for one year or more may be imposed or conviction of a crime defined in Title 17-A, chapter 11 or 45;

H. Any violation of this chapter or any rule adopted by the board; or

I. For other purposes as specified by rules or law.

Sec. 3. 32 MRSA §91-A, as repealed and replaced by PL 2001, c. 229, §9, is amended to read:

§91-A. Appeals of nondisciplinary actions and refusals to issue

Any person or organization aggrieved by the decision of the staff or a subcommittee of the board in

~~waiving the application of any rule, in modifying or refusing to issue or renew a license, in taking any disciplinary nondisciplinary action pursuant to this chapter or rules adopted pursuant to this chapter or in the interpretation of this chapter or rules adopted pursuant to this chapter or in refusing to issue a license~~ may appeal the decision to the board for a final decision. The staff's or subcommittee's decision stands until the board issues a decision to uphold, modify or overrule the staff's or subcommittee's decision. In the case of nonrenewal, the person or organization must be afforded an opportunity for hearing in accordance with this chapter and the Maine Administrative Procedure Act.

~~Any person or organization aggrieved by a final decision of the board in refusing to issue or renew a license, in taking any disciplinary action pursuant to this chapter or rules adopted pursuant to this chapter or in the interpretation of this chapter or any rule adopted pursuant to this chapter may appeal the board's decision to the Superior Court in accordance with A final decision of the board constitutes final agency action appealable pursuant to Title 5, chapter 375, subchapter VII 7.~~

Sec. 4. 32 MRSA §92, first ¶, as amended by PL 2001, c. 229, §10, is further amended to read:

All complaints and investigative records of the board are confidential during the pendency of an investigation. Any reports, information or records provided to the board or department pursuant to this chapter ~~must be provided to the licensee and~~ are confidential insofar as the reports, information or records identify or permit identification of any patient; ~~provided that the~~ The board may disclose any confidential information as follows.

Sec. 5. 32 MRSA §92, sub-§§3 and 4, as enacted by PL 2001, c. 229, §10, are amended to read:

3. Investigations. ~~All complaints and investigative records of the board are confidential during the pendency of an investigation. Those Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this subsection, an investigation is concluded when:~~

- A. A notice of an adjudicatory hearing as defined under Title 5, chapter 375, subchapter I 1 has been issued;
- B. A consent agreement has been executed; or
- C. A letter of dismissal has been issued or the investigation has otherwise been closed.

4. Exceptions. Notwithstanding ~~subsection 3~~ any other provision of this section, during the pendency of an investigation, a complaint or investigative record may be disclosed:

- A. To Maine Emergency Medical Services employees designated by the director;
- B. To designated complaint officers of the board;
- C. By a Maine Emergency Medical Services employee or complaint officer designated by the board when, and to the extent, considered necessary to facilitate the investigation;
- D. To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
- E. When and to the extent considered necessary by the director to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
- F. Pursuant to rules adopted by the department, when it is determined that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
- G. To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated.

Sec. 6. 32 MRSA §92-A, sub-§2, as repealed and replaced by PL 2001, c. 229, §11, is amended to read:

2. Confidentiality. All proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process.

Sec. 7. Resolve 2003, c. 23, §4 is amended to read:

Sec. 4. Report; legislation. Resolved: That the commissioner shall submit a report that includes findings and recommendations, including

suggested legislation, to the ~~Joint Standing Committee on Criminal Justice and Public Safety joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters~~ no later than January 31, 2004 ~~2005~~. The ~~Joint Standing Committee on Criminal Justice and Public Safety joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters~~ may report out legislation related to this report to the ~~Second~~ First Regular Session of the ~~21st~~ 122nd Legislature; and be it further

Sec. 8. Retroactivity. That section of this Act that amends Resolve 2003, chapter 23 applies retroactively to January 31, 2004.

See title page for effective date.

CHAPTER 560

S.P. 675 - L.D. 1832

An Act To Maintain the Current Statutes Regarding Unlawful Solicitation To Benefit Law Enforcement Agencies

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

Whereas, this legislation needs to take effect before the expiration of the 90-day period in order to prevent changes to the law that are scheduled to take effect before the expiration of the 90-day period; 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. 25 MRSA §3701, sub-§6, as enacted by PL 2001, c. 582, §1, is amended to read:

6. Solicitation agent. "Solicitation agent" means a person or entity that receives payment for or retains any portion of the proceeds from soliciting. "Solicitation agent" includes, but is not limited to, a person or entity that receives or retains reimbursement for expenses related to soliciting.

~~This subsection is repealed February 1, 2004.~~

Sec. 2. 25 MRSA §3702-A, as amended by PL 2001, c. 582, §2, is further amended to read:

§3702-A. Solicitation unlawful

A law enforcement agency, law enforcement association, law enforcement officer or solicitation agent may not solicit property from the general public when the property or any part of that property in any way tangibly benefits, is intended to tangibly benefit or is represented to be for the tangible benefit of any law enforcement officer, law enforcement agency or law enforcement association. Any violation of this chapter constitutes a violation of the Maine Unfair Trade Practices Act. ~~This section is repealed February 1, 2004.~~

Sec. 3. 25 MRSA §3702-B, as enacted by PL 2001, c. 582, §3, is repealed.

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

Effective March 17, 2004.

CHAPTER 561

S.P. 220 - L.D. 611

An Act To Obtain Substance Abuse Services for Youth in Need of Services

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

Sec. 1. 22 MRSA §4099-A, sub-§4, ¶¶B and C, as enacted by PL 2003, c. 451, Pt. P, §3, are amended to read:

B. Is without or beyond the control of the child's parent or legal guardian; ~~or~~

C. Is in imminent danger of serious physical, mental or emotional injury or at risk of prosecution for a juvenile offense; or

Sec. 2. 22 MRSA §4099-A, sub-§4, ¶D is enacted to read:

D. Is abusing alcohol or drugs and is at risk of serious harm as a result.

Sec. 3. 22 MRSA §4099-C, sub-§3, as enacted by PL 2003, c. 451, Pt. P, §3, is amended to read:

3. Imminent danger. If a youth is determined by a case manager to be in need of services and is in imminent danger of serious physical, mental or emotional injury ~~or, is~~ is at risk of prosecution for a juvenile offense or is abusing alcohol or drugs and is at risk of serious harm as a result, the case manager