

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

2. Compliance with federal law. The State must comply with the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, Title XII, and regulations adopted under that Act in issuing or suspending a commercial license. In the case of any conflict between the federal statute or regulation and a statute or rule of this State, the federal statute or regulation must apply and take precedence. To ensure compliance, the Secretary of State shall adopt rules, administrative procedures, practices and policies, organizational structures, internal control mechanisms and resource assignments.

These ~~rules~~ compliance measures must include, but are not limited to, provisions that:

- A. Provide for full state participation in the national commercial driver's license clearinghouse;
- B. Require commercial drivers to have a single license;
- C. Reduce and prevent commercial motor vehicle accidents, fatalities and injuries by disqualifying commercial drivers who have committed serious traffic or other designated offenses from operating commercial motor vehicles;
- D. Protect public safety by removing from public ways a commercial driver who has:
 - (1) Operated or attempted to operate a commercial vehicle while having 0.04% or more by weight of alcohol in that driver's blood;
 - (2) Refused to submit to or complete a lawfully requested test to determine blood-alcohol level; or
 - (3) Operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor or drugs; and
- E. Provide maximum safety on public ways.

Sec. B-7. 29-A MRSA §1354, sub-§6, ¶A, as amended by PL 1999, c. 668, §116, is further amended to read:

A. The Secretary of State shall establish the Technical Review Panel that includes representatives from the Department of Education, the Department of Public Safety, ~~the American Automobile Association,~~ law enforcement agencies, the insurance industry, the motor carrier industry and a driver education teacher and instructor. The Technical Review Panel shall assist the Secretary of State in developing curriculum and teacher and instructor training and certification.

Sec. B-8. Effective date. This Part takes effect 90 days after adjournment of the Second Special Session of the 121st Legislature.

PART C

Sec. C-1. 29-A MRSA §1601-A, sub-§4, as enacted by PL 2001, c. 463, §2 and affected by §7 and PL 2003, c. 434, §35, is amended to read:

4. Suspension. ~~Upon receipt of notice provided in subsection 1, Except as provided in subsection 5,~~ the Secretary of State, upon receipt of the notice required in subsection 1, shall suspend, within 30 days and in accordance with section 2482, the owner's registration certificate and plates for that motor vehicle. The suspension continues until that person provides evidence of insurance to the Secretary of State.

Sec. C-2. 29-A MRSA §1601-A, sub-§5 is enacted to read:

5. Stored vehicles. The Secretary of State, upon receipt of the notice required in subsection 1, may cancel the owner's registration certificate and plates for a stored vehicle. The Secretary of State may not reinstate the registration certificate and plates until the owner provides evidence of insurance to the Secretary of State. For the purposes of this subsection, "stored vehicle" means a motor vehicle that the Secretary of State determines is stored and not operated for a period of at least 3 consecutive months per year. The Secretary of State may not, upon cancellation, refund any portion of the registration fee.

Sec. C-3. Effective date. This Part takes effect January 1, 2005.

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

Effective April 22, 2004, unless otherwise indicated.

CHAPTER 653

H.P. 1287 - L.D. 1765

An Act To Clarify the Responsibilities under the Adult Protective Services Act

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

Sec. 1. 22 MRSA §3471, as amended by PL 1991, c. 711, §1, is further amended to read:

§3471. Declaration of policy and legislative intent

The Legislature recognizes that many adult citizens of the State, because of incapacitation or dependency, are unable to manage their own affairs or to protect themselves from abuse, neglect or exploitation. Often these persons ~~cannot~~ can not find others able or willing to render assistance. The Legislature intends, through this Act, to establish a program of protective services designed to fill this need and to ~~assure~~ ensure its availability to all incapacitated and dependent adults who are faced with abuse, neglect, exploitation or the substantial risk of abuse, neglect or exploitation. It is also the intent of the Legislature to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's need for services and to require that due process be followed in imposing those restrictions. Any requirements for disclosure of information contained in this chapter do not supersede federal law if federal law prohibits the disclosure of such information in the manner as set forth in this chapter.

Sec. 2. 22 MRSA §3472, as amended by PL 2001, c. 354, §3, is further amended to read:

§3472. Definitions

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

1. Abuse. "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment ~~with resulting~~ that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the ~~willful~~ intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions.

2. Adult. "Adult" means any person who has attained ~~the age of~~ 18 years of age or who is a legally emancipated minor.

2-A. Bureau. "Bureau" means the Department of Human Services, Bureau of Elder and Adult Services ~~of the Department of Human Services~~.

3. Caretaker. "Caretaker" means any individual or institution who has or assumes the responsibility for the care of an adult.

4. Commissioner. "Commissioner" means the Commissioner of Human Services or a designated representative in the geographical area in which the person resides or is present or, in the case of ~~mentally retarded~~ adults with mental retardation, the Commissioner of Behavioral and Developmental Services or a designated representative in the geographical area in which the person resides or is present.

5. Department. "Department" means either the Department of Human Services or, in the case of ~~mentally retarded~~ adults with mental retardation, the Department of Behavioral and Developmental Services.

6. Dependent adult. "Dependent adult" means ~~any adult who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn.~~ an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. "Dependent adult" includes, but is not limited to, any of the following:

A. A resident of a nursing home licensed or required to be licensed under section 1817;

B. A resident of a facility providing assisted living services licensed or required to be licensed pursuant to section 7801; or

C. A person considered a dependent person under Title 17-A, section 555.

7. Emergency. "Emergency" refers to a situation ~~where~~ in which:

A. The incapacitated or dependent adult is in immediate risk of serious harm;

B. The incapacitated or dependent adult is unable to consent to services ~~which~~ that will diminish or eliminate the risk; and

C. There is no guardian person legally authorized to consent to emergency services.

8. Emergency services. "Emergency services" ~~refer~~ refers to those services necessary to avoid serious harm.

9. Exploitation. "Exploitation" means the illegal or improper use of an incapacitated or dependent adult or ~~his~~ that adult's resources for another's profit or advantage.

10. Incapacitated adult. "Incapacitated adult" means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult ~~cannot~~ can not effectively manage or apply that individual's estate to necessary ends.

11. Neglect. "Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these.

12. Protective services. "Protective services" means services ~~which will that~~ separate incapacitated or dependent adults from danger. Protective services include, but are not limited to, social, medical and psychiatric services necessary to preserve the incapacitated or dependent adult's rights and resources and to maintain the incapacitated or dependent adult's physical and mental well-being.

Protective services may include seeking guardianship or a protective order under Title 18-A, Article ~~¶ 5~~.

13. Serious harm. "Serious harm" means:

A. Serious physical injury or impairment;

B. Serious mental injury or impairment, ~~which that~~ now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior; ~~or~~

C. Sexual abuse or sexual exploitation; ~~or~~

D. Serious waste or dissipation of resources.

15. Sexual abuse or sexual exploitation. "Sexual abuse or sexual exploitation" means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent.

Sec. 3. 22 MRSA §3473, sub-§1, ¶¶A and B, as amended by PL 1991, c. 711, §2, are further amended to read:

A. Protect ~~abused, neglected or exploited~~ incapacitated and dependent adults from abuse, neglect and exploitation and protect incapacitated and dependent adults in circumstances ~~which that~~ present a substantial risk of abuse, neglect or exploitation;

B. Prevent abuse, neglect or exploitation of incapacitated and dependent adults;

Sec. 4. 22 MRSA §3473, sub-§2, ¶B, as enacted by PL 1981, c. 527, §2, is amended to read:

B. Take appropriate action, including providing or arranging for the provision of appropriate services and making referrals to law enforcement; and

Sec. 5. 22 MRSA §3473, sub-§3, ¶¶A and B, as amended by PL 1991, c. 711, §4, are further amended to read:

A. Matters relating to the performance of duties in uncontested guardianship; or conservatorship

or termination of guardianship or conservatorship proceedings; and

B. Requests for emergency guardianships arising from the need for emergency medical treatment or placement in ~~adult foster homes, boarding homes~~ assisted living programs, residential care facilities or nursing ~~homes~~ facilities or for orders necessary to apply for or preserve an estate in emergency situations.

Sec. 6. 22 MRSA §3474, sub-§2, as amended by PL 1989, c. 7, Pt. N, §2 and c. 858, §§6 to 8, is further amended to read:

2. Optional disclosure of records. The department may disclose relevant information in the records to the following persons, with protection for the identity of reporters and other persons when appropriate:

A. An agency responsible for investigating a report of adult abuse, neglect or exploitation when the investigation is authorized by statute or by an agreement with the department;

B. An advocacy agency conducting an investigation under chapter 961, United States Public Law 88-164, Title I, Part C or United States Public Law 99-319, except as provided in subsection 3, paragraph D;

C. A physician treating an incapacitated or dependent adult ~~whom he~~ who the physician reasonably suspects may be abused, neglected or exploited;

D. An incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited; or the caretaker of the incapacitated or dependent adult, ~~with protection for identity of reporters and other persons when appropriate~~;

E. A person having the legal responsibility or authorization to care for, evaluate, treat or supervise an incapacitated or dependent adult;

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent must be obtained by the department prior to the contact;

G. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857; ~~and~~

H. A relative by blood, marriage or adoption of an incapacitated or dependent adult named in a record; and

I. A member of a panel appointed by the department or the Office of the Attorney General to review the death or serious injury of an incapacitated or dependent adult or a child.

Sec. 7. 22 MRSA §3474, sub-§3, ¶B, as amended by PL 1985, c. 644, §2, is further amended to read:

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access ~~shall~~ must be limited to ~~in camera~~ in camera inspection; unless the court determines that ~~public~~ disclosure of the information is necessary for the resolution of an issue pending before it;

Sec. 8. 22 MRSA §3475, as amended by PL 1981, c. 705, Pt. E, §1, is further amended to read:

§3475. Penalty for violations

A person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. Any licensed, registered, accredited or certified professional who has been adjudged to have violated a provision of this chapter ~~shall~~ must, in addition to any financial penalty, be reported by the court or the department to the appropriate professional licensing organization, registration board, accrediting unit or facility.

Sec. 9. 22 MRSA §3477, sub-§1, as amended by PL 2003, c. 599, §7 and affected by §9, is repealed and the following enacted in its place:

1. Report required. The following persons immediately shall report to the department when the person has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation:

A. While acting in a professional capacity:

- (1) An allopathic or osteopathic physician;
- (2) A medical intern;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist;
- (6) A chiropractor;
- (7) A podiatrist;

(8) A registered or licensed practical nurse;

(9) A certified nursing assistant;

(10) A social worker;

(11) A psychologist;

(12) A pharmacist;

(13) A physical therapist;

(14) A speech therapist;

(15) An occupational therapist;

(16) A mental health professional;

(17) A law enforcement official;

(18) Emergency room personnel;

(19) An ambulance attendant;

(20) An emergency medical technician;

(21) Unlicensed assistive personnel;

(22) A humane agent employed by the Department of Agriculture, Food and Rural Resources; or

(23) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the incapacitated or dependent adult, regardless of whether the person receives compensation; or

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation.

The duty to report under this subsection applies to individuals who must report directly to the department. A supervisor or administrator of a person making a report under this section may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report. Internal procedures to facilitate, ensure confidentiality of and apprise supervisors and administrators of reports may be established as long as those procedures are not inconsistent with this chapter.

Sec. 10. 22 MRSA §3477, sub-§2, as enacted by PL 1981, c. 705, Pt. E, §2, is amended to read:

2. Reports. Reports regarding abuse, neglect or exploitation ~~shall~~ must be made immediately by telephone to the department and ~~shall~~ must be followed by a written report within 48 hours if requested by the department. The reports ~~shall~~ must contain the name and address of the involved adult; information regarding the nature and extent of the abuse, neglect or exploitation; the source of the report; the person making the report; ~~his~~ that person's occupation; and where ~~he~~ that person can be contacted. The report may contain any other information ~~which~~ that the reporter believes may be helpful.

Sec. 11. 22 MRSA §3477, sub-§3, as enacted by PL 1981, c. 705, Pt. E, §2, is amended to read:

3. Confidentiality in case of treatment of individual suspected of causing abuse, neglect or exploitation. This section does not require any person acting in ~~their~~ that person's professional capacity to report when all of the following requirements are met:

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of causing the abuse, neglect or exploitation;

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and

C. In the opinion of the person required to report, the abused, neglected or exploited adult's life or health is not immediately threatened.

Sec. 12. 22 MRSA §3477, sub-§4 is enacted to read:

4. Confidentiality in case of treatment of individual suspected of being abused, neglected or exploited. This section does not require any person acting in that person's professional capacity to report when all of the following requirements are met:

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of being abused, neglected or exploited;

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and

C. In the opinion of the person required to report, the individual is not incapacitated and the individual's life or health is not immediately threatened.

Sec. 13. 22 MRSA §3479, as repealed and replaced by PL 1989, c. 858, §12, is amended to read:

§3479. Optional reporting

Any person may make a report ~~if to the department when~~ that person ~~knows or~~ has reasonable cause to suspect an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation of an incapacitated or dependent adult, or has reasonable cause to suspect that an adult is incapacitated.

Sec. 14. 22 MRSA §3479-A, sub-§1, as enacted by PL 1981, c. 705, Pt. E, §2, is amended to read:

1. Reporting and proceedings. A person participating in good faith in reporting under this subchapter, or in a related adult protection investigation or proceeding, is immune from any civil liability that might otherwise result from these actions, including, but not limited to, any civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information.

Sec. 15. 22 MRSA §3480, sub-§1, ¶A, as enacted by PL 1981, c. 527, §2, is amended to read:

A. Issue subpoenas requiring persons to disclose or provide to the department information or records in their possession ~~which that~~ are necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective proceeding; including, but not limited to, health care information that is confidential under section 1711-C.

(1) The department may apply to the District Court and Probate Court to enforce a subpoena; ~~and.~~

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department; and

Sec. 16. 22 MRSA §3480-A is enacted to read:

§3480-A. Confidential communications

The confidential quality of communications under section 1711-C, Title 24-A, section 4224 and Title 32, sections 1092-A and 7005 is abrogated to the

extent allowable under federal law in relation to required reporting or cooperating with the department in an investigation or other protective activity under this chapter. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 3474.

Sec. 17. 22 MRSA §3484, as enacted by PL 1981, c. 527, §2, is amended to read:

§3484. Payment for protective services

At the time the department makes an evaluation of the case reported, it ~~shall~~ must be determined, according to regulations set by the commissioner, whether the incapacitated or dependent adult is financially capable of paying for the essential services. To the extent that assets are available to the incapacitated or dependent ~~adults, or wards~~ adult, ward or protected person, the cost of services ~~shall~~ must be borne by the estate of ~~persons~~ the person receiving those services.

Sec. 18. 22 MRSA §3485, as amended by PL 1995, c. 183, §1, is further amended to read:

§3485. Reporting abuse

Upon finding evidence indicating that a person has abused ~~or~~ neglected or exploited an incapacitated or dependent adult, resulting in serious harm, ~~or has exploited an incapacitated or dependent adult~~, the department shall notify the district attorney or law enforcement agency.

Sec. 19. 22 MRSA c. 958-A, sub-c. 3, as enacted by PL 1983, c. 575, §1, is repealed.

Sec. 20. 22 MRSA c. 958-A, sub-c. 4 is enacted to read:

SUBCHAPTER 4

RULES

§3493. Rules

The department may adopt rules in accordance with Title 5, chapter 375, subchapter 2-A to carry out this chapter.

Sec. 21. 22 MRSA §5106, sub-§11-B, as enacted by PL 1989, c. 329, §16, is amended to read:

11-B. Adult protective services. Administer a program of protective services as provided in chapter 958-A designed to protect incapacitated and dependent adults, other than adults who are mentally retarded,

from abuse, neglect, exploitation and physical danger. The program is described in the Adult Protective Services Act, ~~sections 3471 to 3492;~~

See title page for effective date.

CHAPTER 654

S.P. 751 - L.D. 1910

**An Act To Implement the
Recommendations of the Committee
To Study the Revenue Sources of the
Office of Consumer Credit
Regulation**

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

Sec. 1. 9-A MRSA §6-203, sub-§3-B, as enacted by PL 1993, c. 268, §2, is repealed and the following enacted in its place:

3-B. Notwithstanding subsections 2 and 3, lenders regulated by the Office of Consumer Credit Regulation who are supervised lenders making loans secured by an interest in land shall pay a volume fee on the original unpaid balances arising from consumer credit transactions entered into in this State during the previous calendar year of:

A. Fifteen dollars for each \$100,000, or part thereof, if the fund balance of the Office of Consumer Credit Regulation as of October 1st of the previous calendar year exceeds 125% of the office's current annual budget; or

B. Twenty dollars for each \$100,000, or part thereof, if the fund balance of the Office of Consumer Credit Regulation as of October 1st of the previous calendar year does not exceed 125% of the office's current annual budget.

Sec. 2. 9-A MRSA §6-203, sub-§3-C is enacted to read:

3-C. The administrator may adjust the volume fees set out in subsections 2, 3 and 3-B by rule not more frequently than annually. In setting the fees, the administrator shall consider the reasonable costs of regulation of all aspects of such transactions and the staffing levels required to administer the responsibilities of the Office of Consumer Credit Regulation. The fee assessed pursuant to subsections 2 and 3 may not exceed \$25 per \$100,000, and the fee assessed pursuant to subsection 3-B may not exceed \$20 per \$100,000. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.