

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2004 to March 30, 2005**

**FIRST SPECIAL SESSION**  
**April 4, 2005 to June 18, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 29, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 17, 2005**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2005**

**Sec. F-35. 7 MRSA §3154, first ¶**, as enacted by PL 1983, c. 573, §4, is amended to read:

In the event that information ~~requestered~~ ~~re-~~  
~~quested~~ is not adequately provided by any dealer, the commissioner may require producers who may be eligible for participation in the ~~milk pool~~ Maine Milk Pool to furnish such reports and other information as may be necessary to determine their eligibility and the extent of their participation.

**Sec. F-36. 7 MRSA §3154, 4th ¶**, as enacted by PL 1987, c. 447, §10, is amended to read:

An eligible marketing cooperative, or an organization applying for recognition as an eligible marketing cooperative, shall furnish the commissioner all information, records and reports necessary for the commissioner to determine and monitor the cooperative's initial eligibility and its ongoing compliance with this chapter. In addition to any other available remedies, the commissioner may commence proceedings pursuant to section ~~3152, subsection 6~~ 3155-B, to revoke the eligible status of a cooperative ~~which that~~ willfully fails to provide information, records or reports requested by the commissioner.

**Sec. F-37. 7 MRSA §3155-B** is enacted to read:

**§3155-B. Eligible marketing cooperative; revocation of status**

Notwithstanding section 3155-A, Title 4, section 152, subsection 9 and Title 5, section 10051, subsection 1, the commissioner may revoke the eligible status of a marketing cooperative upon a determination that it has through its operation evaded, impaired or undermined the purposes of this chapter.

**PART G**

**Sec. G-1. Department recommendations for revisions.** The Department of Agriculture, Food and Rural Resources shall develop recommendations to address legal ambiguities and other issues in the Maine Revised Statutes, Title 7 identified as in need of revision by the department and the Office of Policy and Legal Analysis. The department shall submit legislation to implement its recommendations to the Second Regular Session of the 122nd Legislature no later than December 15, 2005. The department shall seek drafting assistance from the Office of Policy and Legal Analysis.

See title page for effective date.

**CHAPTER 383**

**S.P. 494 - L.D. 1405**

**An Act To Prepare Maine for Public Health Emergencies**

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

**Sec. 1. 22 MRSA c. 250**, as amended, is further amended by repealing the chapter headnote and enacting the following in its place:

**CHAPTER 250**

**CONTROL OF NOTIFIABLE DISEASES AND CONDITIONS**

**Sec. 2. 22 MRSA §801, sub-§§4-B to 4-E** are enacted to read:

**4-B. Environmental disease.** "Environmental disease" means any abnormal condition or disorder aggravated or caused by exposure to an environmental hazard.

**4-C. Environmental hazard.** "Environmental hazard" means chemicals, physical agents, biomechanical stressors and biological toxins that are present in the environment and that have an adverse effect on human health.

**4-D. Environmentally related health effects.** "Environmentally related health effects" means chronic diseases, birth defects, developmental disabilities and other noninfectious health effects that may be related to exposure to environmental hazards.

**4-E. Exposure.** "Exposure" means direct contact or interaction with an environmental hazard or toxic agent affecting or being taken into the body.

**Sec. 3. 22 MRSA §801, sub-§7**, as enacted by PL 1989, c. 487, §11, is amended to read:

**7. Notifiable disease or condition.** "Notifiable disease or condition" means any communicable disease ~~or~~ occupational disease or environmental disease, the occurrence or suspected occurrence of which is required to be reported to the department pursuant to sections 821 to 825 or section 1493.

**Sec. 4. 22 MRSA §801, sub-§10**, as enacted by PL 1989, c. 487, §11, is amended to read:

**10. Public health threat.** "Public health threat" means any condition or behavior ~~which that~~ can reasonably be expected to place others at significant risk of exposure to a toxic agent or environmental

hazard or infection with a communicable notifiable disease or condition.

A. A condition poses a public health threat if an infectious or toxic agent or environmental hazard is present in the environment under circumstances ~~which that~~ would place persons at significant risk of ~~becoming infected an adverse effect on a person's health from exposure to or infection with a communicable notifiable disease or condition.~~

B. Behavior by an infected person poses a public health threat if:

(1) The infected person engages in behavior that has been demonstrated epidemiologically to create a significant risk of transmission of a communicable disease;

(2) The infected person's past behavior indicates a serious and present danger that the infected person will engage in behavior that creates a significant risk of transmission of a communicable disease to another;

(3) The infected person fails or refuses to cooperate with a departmental contact notification program; or

(4) The infected person fails or refuses to comply with any part of either a cease and desist order or a court order issued to the infected person to prevent transmission of a communicable disease to another.

C. Behavior described in paragraph B, subparagraphs (1) and (2), ~~shall may~~ not be considered a public health threat if the infected person demonstrates that any other person placed at significant risk of becoming infected with a communicable disease was informed of the risk and consented to it.

**Sec. 5. 22 MRSA §801, sub-§11** is enacted to read:

**11. Toxic agent.** "Toxic agent" means a chemical or physical substance that, under certain circumstances of exposure, may cause harmful effects to living organisms.

**Sec. 6. 22 MRSA §802, sub-§1, ¶¶A to D,** as enacted by PL 1989, c. 487, §11, are amended to read:

A. Designate and classify communicable, environmental and occupational diseases;

B. Establish requirements for reporting and other surveillance methods for measuring the occurrence of communicable ~~diseases~~, occupational

diseases and environmental diseases and the potential for epidemics;

C. Investigate cases, epidemics and occurrences of communicable, environmental and occupational diseases; and

D. Establish procedures for the control, detection, prevention and treatment of communicable, environmental and occupational diseases, including public immunization and contact notification programs.

**Sec. 7. 22 MRSA §802, sub-§2,** as enacted by PL 1989, c. 487, §11, is amended to read:

**2. Health emergency.** In the event of an actual or threatened epidemic or ~~outbreak of a communicable or occupational disease~~ public health threat, the department may declare that a health emergency exists and may adopt emergency rules for the protection of the public health relating to:

A. Procedures for the isolation and placement of infected persons for purposes of care and treatment or infection control;

B. Procedures for the disinfection, seizure or destruction of contaminated property; and

C. The establishment of temporary facilities for the care and treatment of infected or exposed persons, which ~~shall be~~ are subject to the supervision and regulations of the department and to the limitations set forth in section 807.

**Sec. 8. 22 MRSA §802, sub-§3,** as repealed and replaced by PL 2001, c. 694, Pt. B, §4 and affected by PL 2003, c. 366, §1, is amended to read:

**3. Rules.** The department shall adopt rules to carry out its duties as specified in this chapter. The application of rules adopted pursuant to Title 5, section 8052 to implement section 820 must be limited to periods of an extreme public health emergency. Rules adopted pursuant to this subsection, unless otherwise indicated, are routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

**Sec. 9. 22 MRSA §803,** as enacted by PL 1989, c. 487, §11, is amended to read:

### **§803. Inspection**

If the department has reasonable grounds to believe that there exists a public health threat, either on public or private property, ~~any communicable disease which presents a public health threat~~, a duly authorized agent of the department may enter any place, building, vessel, aircraft or common carrier with the permission of the owner, agent or occupant where the ~~communicable disease~~ public health threat is reasona-

bly believed to exist and may inspect and examine the same. If entry is refused, that agent shall apply for an inspection warrant from the District Court pursuant to Title 4, section 179, prior to conducting the inspection.

**Sec. 10. 22 MRSA §806, sub-§1**, as enacted by PL 1989, c. 487, §11, is amended to read:

**1. Dismissal.** In the event of an actual or threatened outbreak of a communicable disease or other public health threat, the department may order that any ~~or all persons~~ person attending or working in ~~any~~ a school or day care facility be excluded until the department determines that a public health threat no longer exists.

**Sec. 11. 22 MRSA §807, last ¶**, as enacted by PL 1989, c. 487, §11, is amended to read:

For purposes of carrying out this chapter, the department may designate facilities and private homes for the confinement and treatment of infected persons posing a public health threat. The department may designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility. Designated institutions must have necessary clinic, hospital or confinement facilities as may be required by the department. The department may enter into arrangements for the conduct of these facilities with public officials or persons, associations or corporations in charge of or maintaining and operating these institutions.

**Sec. 12. 22 MRSA §812, sub-§1, ¶G**, as enacted by PL 1989, c. 487, §11 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

G. Undergoing a comprehensive medical assessment by the State Forensic Service. The court, in selecting the examination site, shall consider proximity to the court, availability of an examiner and the need to protect the public health. No person may be presented for examination under this subsection without arrangements for examination having first been made by the court, clerk of the court or the petitioner with the State Forensic Service. The opinion of the State Forensic Service ~~shall~~ must be reported to the court forthwith following the examination.

The court shall order the individual to be further examined by a psychiatrist, neurologist and any additional expert if, based on the report of the State Forensic Service, it appears that:

- (1) The individual suffers from a mental disease or defect ~~which~~ that causes the individual to act in such a manner as to endanger others with risk of infection with a communicable disease; or

- (2) Further observation or examination is required.

If, based on the examinations, the department determines that admission to an appropriate institution for the mentally ill or mentally retarded is necessary, it shall petition for involuntary hospitalization pursuant to Title 34-B, chapter 3. If the District Court orders the involuntary hospitalization of the individual pursuant to Title 34-B, chapter 3, the petition brought pursuant to section 811 ~~shall~~ must be dismissed without prejudice. If it is determined that admission to an appropriate institution for the mentally ill or the mentally retarded is not necessary, the head of the institution where the examinations have taken place shall notify the commissioner or the commissioner's designee, prior to discharging the respondent.

In no event may the period of examination pursuant to this subsection exceed 60 days without further order by the court, which may extend commitment for further observation or examination for an additional 60 days, provided that the court finds facts sufficient to show that the individual suffers from a mental disease or defect ~~which~~ that causes the individual to act in such a manner as to endanger others with risk of infection with a communicable disease; and

**Sec. 13. 22 MRSA §815, sub-§1**, as enacted by PL 1989, c. 487, §11, is amended to read:

**1. Privileges abrogated.** Subject to the limitations imposed by United States Code, Title 42, Sections 290dd-3 and 290ee-3, the physician-patient and psychotherapist-patient privileges under the Maine Rules of Evidence and those confidential communications described under Title 5, section 19203, Title 24-A, section 4224, Title 32, section 7005 and Title 34-B, section 1207; are abrogated to the extent necessary to permit reporting to the Bureau of Health any incidents of notifiable disease or condition; cooperating with the Bureau of Health or an intervention team appointed by the Bureau of Health in investigating a case of a notifiable disease or condition or suspected epidemic, or taking preventive action in such a case; or giving evidence in a proceeding pursuant to this chapter. Information released to the bureau pursuant to this section ~~shall~~ must be kept confidential and may not be disclosed by the bureau except as provided in section 824 and Title 5, section 19203, subsection 8.

**Sec. 14. 22 MRSA §817**, as enacted by PL 1989, c. 487, §11, is amended to read:

**§817. Discharge**

An individual committed to a hospital ~~or institution~~ facility or private home pursuant to section 812 may be discharged whenever the physician responsible for that individual's treatment and the department determine that the individual may be discharged without danger to other individuals. The department shall immediately report the discharge, with a full statement of the reasons for the discharge, to the court ~~which that~~ ordered the commitment.

If an individual committed to a hospital, facility or private home pursuant to section 812 ~~leaves the hospital~~ violates the commitment prior to discharge in accordance with this section, the hospital or physician responsible for treatment shall immediately report this to the department. An arrest warrant ~~shall issue~~ must be issued upon application by the department to the District Court.

**Sec. 15. 22 MRSA §820, sub-§1, ¶A**, as enacted by PL 2001, c. 694, Pt. A, §1 and affected by PL 2003, c. 366, §1, is amended to read:

A. Upon request of the department, a medical health care provider, pharmacist, medical laboratory or veterinarian shall provide to the department health information directly related to a declared extreme public health emergency.

**Sec. 16. 22 MRSA §820, sub-§1, ¶¶C and D** are enacted to read:

C. The department may implement rules to address the risk or potential risk of a shortage of health care workers. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

D. The department may implement rules to address the need for dispensing drugs in an emergency situation. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 17. 22 MRSA §820, sub-§4**, as enacted by PL 2001, c. 694, Pt. A, §1 and affected by PL 2003, c. 366, §1, is repealed.

**Sec. 18. 22 MRSA §§821 to 823**, as enacted by PL 1989, c. 487, §11, are amended to read:

#### §821. Authority of department

The department shall adopt rules pursuant to section 802 and establish procedures to carry out the rules to provide a uniform system of reporting, recording and collecting information and maintaining confidentiality concerning communicable diseases, environmental or occupational diseases or exposure to toxic agents. The department may designate any communicable disease, environmental disease,

occupational disease or exposure to a toxic agent as a notifiable disease or condition. Any notifiable disease ~~shall~~ or condition must be reported to the department in accordance with this subchapter and the rules established by the department.

#### §822. Reporting

Whenever any physician knows or has reason to believe that any person whom the physician examines or cares for has or is afflicted with any ~~communicable~~ communicable disease or condition designated as notifiable, that physician shall notify the department and make such a report as may be required by the rules of the department. Reports ~~shall~~ must be in the form and content prescribed by the department and the department shall provide forms for making required reports.

#### §823. Time requirements

The reporting of a notifiable disease ~~shall~~ or condition must be made by telephone to the department immediately upon determination that a person has that disease and ~~shall~~ must be followed by a written report mailed to the department within 48 hours.

**Sec. 19. 22 MRSA §824, first ¶**, as enacted by PL 1989, c. 487, §11, is amended to read:

Any person who receives information pursuant to this chapter shall treat as confidential the names of individuals having or suspected of having a notifiable ~~communicable~~ communicable disease or condition, as well as any other information that may identify those individuals. This information may be released to the department for adult or child protection purposes in accordance with chapters 958-A and 1071, or to other public health officials, agents or agencies or to officials of a school where a child is enrolled, for public health purposes, but that release of information must be made in accordance with Title 5, chapter 501, where applicable. In ~~a~~ the event of an actual or threatened epidemic or outbreak or public health threat or emergency, as declared by the state health officer Director of the Bureau of Health, the information may also be released to private health care providers and health and human services agencies for the purpose of ~~preventing further disease transmission carrying out public health functions as authorized by this chapter.~~ Information not reasonably required for the purposes of this section may not be released. All information submitted pursuant to this chapter that does not name or otherwise identify individuals having or suspected of having a notifiable ~~communicable~~ communicable disease or condition may be made available to the public at the sole discretion of the department.

**Sec. 20. 22 MRSA §825**, as enacted by PL 1989, c. 487, §11, is amended to read:

**§825. Penalties**

Any person who knowingly and willfully fails to comply with reporting requirements for notifiable diseases or conditions commits a civil violation for which a ~~forfeiture~~ fine of not more than \$250 may be adjudged. A person who knowingly or recklessly makes a false report under section 822 or who knowingly violates section 824, is civilly liable for actual damages suffered by a person reported upon and for punitive damages and commits a civil violation for which a ~~forfeiture~~ fine of not more than \$500 may be adjudged.

**Sec. 21. 22 MRSA §2013-A, sub-§1**, as amended by PL 1993, c. 600, Pt. B, §§2 to 4, is further amended to read:

**1. Exemptions.** Subject to the limitations set forth in ~~subsection~~ subsections 2 and 3, the following entities are exempted from the provisions of this Act under the following circumstances:

A. Medical laboratories operated by the United States Government, the State or municipalities of the State;

B. Laboratory facilities and laboratory services operated in a hospital licensed by the State;

C. Physicians and medical staff pursuant to this paragraph:

(1) Physicians, physician assistants, family nurse practitioners, Medicare-certified rural health clinics, professional associations or group practices performing only tests acceptable to the department, as defined by rule, exclusively for the examination of their own patients; and

(2) Physicians, physician assistants, family nurse practitioners, Medicare-certified rural health clinics, professional associations or group practices performing tests, other than those listed in subparagraph (1), exclusively for the examination of their own patients are subject only to sections 2024, 2025 and 2039.

Notwithstanding subparagraphs (1) and (2), laboratories incorporated for the mutual use of physician or group practice owners ~~shall be~~ are subject to all provisions of this Act;

D. Medical laboratories in a school, college, university or industrial plant ~~which that~~ are under the direct supervision of, and ~~which whose~~ services are used exclusively by, a duly licensed physician and ~~which that~~ perform only tests ac-

ceptable to the department; otherwise, only sections 2024, 2025 and 2039 apply;

E. Laboratories operated and maintained for research and teaching purposes ~~which that~~ are recognized by the department or involve no patient or public health service;

F. The practice of radiology by a radiologist; and

G. Laboratory services performing health screening tests as defined and regulated by rule adopted by the department. Services exempted under this paragraph include, but are not limited to, the performance of screening tests for cholesterol and colon cancer.

**Sec. 22. 22 MRSA §2013-A, sub-§3** is enacted to read:

**3. Public health reporting requirements.** Notwithstanding subsection 1, any facility, regardless of location, that receives, forwards or analyzes specimens of material from the human body or referred cultures of specimens from the human body and reports the results to health care providers who use the data for purposes of patient care must comply with chapter 250.

**Sec. 23. 26 MRSA c. 7, sub-c. 10** is enacted to read:

**SUBCHAPTER 10****EMPLOYMENT DURING EXTREME PUBLIC HEALTH EMERGENCY****§875. Employment leaves for caregivers and persons affected by extreme public health emergency**

**1. Required leave.** An employer shall grant reasonable and necessary leave from work, with or without pay, for an employee for the following reasons related to an extreme public health emergency:

A. The employee is unable to work because the employee is under individual public health investigation, supervision or treatment related to an extreme public health emergency;

B. The employee is unable to work because the employee is acting in accordance with an extreme public health emergency order;

C. The employee is unable to work because the employee is in quarantine or isolation or is subject to a control measure in accordance with extreme public health emergency information or

directions issued to the public, a part of the public or one or more individuals;

D. The employee is unable to work because of a direction given by the employee's employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the extreme public health emergency threat; or

E. The employee is unable to work because the employee is needed to provide care or assistance to one or more of the following individuals: the employee's spouse or domestic partner as defined under Title 18-A, section 1-201, subsection (10-A); the employee's parent; or the employee's child or child for whom the employee is the legal guardian.

For purposes of this subsection, "extreme public health emergency" has the same meaning as in Title 22, section 801, subsection 4-A.

2. Exceptions. An employer who fails to grant a leave under subsection 1 is not in violation of subsection 1 if:

A. The employer would sustain undue hardship from the employee's absence, including the need to downsize for legitimate reasons related to the impact of the extreme public health emergency on the operation of the business;

B. The request for leave is not communicated to the employer within a reasonable time under the circumstances; or

C. The employee to be granted leave under subsection 1, paragraph E is a state, county or municipal employee whose responsibilities are related to services necessary for protecting the public's health and safety in an extreme public health emergency if the employer requires the employee to work, unless there are no other options or persons able to provide care or assist one or more of the individuals listed under subsection 1, paragraph E.

3. Duration of leave. Leave granted under subsection 1 must be for the duration of an extreme public health emergency and for a reasonable and necessary time period following the termination of the extreme public health emergency for diseases or conditions that are contracted or exposures that occurred during the extreme public health emergency.

4. Documentation. Upon the employee's return to work, the employer has the right to request and receive written documentation from a physician or public health official supporting the employee's leave.

5. Benefits retained. The taking of leave under this subchapter may not result in the loss of any employee benefits accrued before the date on which the leave commenced and does not affect the employee's right to health insurance benefits on the same terms and conditions as applicable to similarly situated employees. For any leave that extends beyond the time described in subsection 3, the employer shall allow an employee to continue the employee's benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration or any portion of this extended leave.

6. Civil penalties. The Department of Labor may assess civil penalties of up to \$200 for each violation of this section if notice of the violation is given to the employer and the department within 6 months of the occurrence.

7. Application. This subchapter applies to all public and private employers, including the State and its political subdivisions.

**Sec. 24.** PL 2001, c. 694, Pt. B, §6, as amended by PL 2003, c. 366, §1, is repealed.

See title page for effective date.

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## CHAPTER 384

H.P. 683 - L.D. 973

### An Act To Make Certain Changes in the Laws Concerning the Family Division of District Court

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

**Sec. 1.** 4 MRSA §183, as amended by PL 2003, c. 688, Pt. C, §1 and c. 689, Pt. B, §6, is further amended to read:

#### §183. Family Division of District Court

There is established within the District Court a Family Division that has jurisdiction over family matters filed in District Court. The Family Division shall provide a system of justice that is responsive to the needs of families and the support of their children. The Supreme Judicial Court may adopt administrative orders and court rules governing the practice, procedure and administration of the Family Division. These practices and procedures must include, but are not limited to, education for the parties, case management and referral services to mediation and other alternate dispute resolution techniques.