

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

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December 1, 2004 to March 30, 2005

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

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

Sec. 1. 17-A MRSA §855, as enacted by PL 1981, c. 245, §2, is repealed and the following enacted in its place:

§855. Patronizing prostitution of minor

1. A person is guilty of patronizing prostitution of a minor if:

A. The person, in return for another's prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought has not in fact attained 18 years of age. Violation of this paragraph is a Class D crime; or

B. The person violates paragraph A and that person knows that the person whose prostitution is sought has not yet attained 18 years of age. Violation of this paragraph is a Class C crime.

See title page for effective date.

CHAPTER 445

H.P. 711 - L.D. 1026

An Act To Provide Uniform Voter Verification and Recount Requirements for Voting Machines

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

Sec. 1. 21-A MRSA §812, sub-§10, as enacted by PL 2003, c. 651, §7, is amended to read:

10. Paper audit trail. ~~Unless excluded pursuant to~~ Except for accessible voting equipment that must be provided by 2006 in compliance with the federal Help America Vote Act of 2002 as provided in section 812-A, subsection 1, it must produce or employ permanent paper records of the votes cast that are able to be verified by individual voters before their votes are cast and that provide a manual audit capacity for the machine. In the case of direct recording electronic voting machines, those records must also identify the individual machines that produced them without revealing the identities of the voters who cast the ballots. In all cases, these records must be reviewed in the event of a recount and considered in conjunction with the machine-produced tally.

Sec. 2. 21-A MRSA §812-A, sub-§1, as enacted by PL 2003, c. 651, §8, is amended to read:

1. Accessible voting equipment at each polling place. The Secretary of State, in compliance with the voting accessibility requirements of the federal Help

America Vote Act of 2002, shall provide one direct recording electronic voting machine, or other voting system equipped for individuals with disabilities, for use at each polling place used in the conduct of state elections. Such machines must produce permanent paper records that provide a manual audit capacity for the machines and must also provide voters with audio functions that enable the voters to verify their ballots aurally before the votes are cast, and all such machines ~~are exempt from~~ must meet the requirements of section 812, subsection 10 ~~unless the Secretary of State is unable to procure machines that the Secretary of State determines are adequate to meet the requirements of this section and section 812 in time to comply with the Help America Vote Act of 2002.~~

Additional accessible voting machines may be used in the conduct of state elections, but those machines must meet the requirements set forth in section 812.

See title page for effective date.

CHAPTER 446

H.P. 988 - L.D. 1424

An Act To Simplify Implementation of the Maine Learning Results

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

Sec. 1. 20-A MRSA §4504, sub-§2, as repealed and replaced by PL 2001, c. 454, §17, is amended to read:

2. Comprehensive review. The commissioner shall conduct a comprehensive review of a school administrative unit in accordance with the school assistance process established in section 6210, based on a review of the school administrative unit's comprehensive education plan and the local assessment system, or as part of an inspection in accordance with section 258-A.

Sec. 2. 20-A MRSA §4722, sub-§3, as amended by PL 2001, c. 454, §24 and PL 2003, c. 545, §6, is further amended to read:

3. Satisfactory completion. A diploma may be awarded ~~only~~ to secondary school students who have satisfactorily completed all diploma requirements in accordance with the academic standards of the school administrative unit, ~~and effective with the class of 2007, with the requirements specified in section 6202-A, subsection 3 and this chapter. All secondary school students must work toward achievement of the content standards of the system of learning results. Exceptional students, as defined in section 7001, subsection 2, who successfully meet the content~~

standards of the system of learning results in addition to any other diploma requirements applicable to all secondary school students, as specified by the goals and objectives of their individualized education plans, may be awarded a high school diploma. Career and technical students may, with the approval of the commissioner, satisfy the 2nd-year math and science, the 2nd-year social studies and the fine arts requirements of subsection 2 through separate or integrated study within the career and technical school curriculum.

Sec. 3. 20-A MRSA §6202, first ¶, as amended by PL 2001, c. 454, §29, is further amended to read:

The commissioner shall establish a statewide assessment program, ~~known as the Maine Education Assessment,~~ to measure and evaluate on a continuing basis the academic achievements of students at grades 4, 8 and 11 in the content areas of the system of learning results established in section 6209 specified by the commissioner. The commissioner may elect to provide for the use of alternative measures of student achievement in grade 11. This assessment applies to students in the public elementary and secondary schools and in all private schools approved for tuition whose school enrollments include at least 60% publicly-funded students, as determined by the previous school year's October and April average enrollment. The assessment program must be adapted to meet the needs of exceptional students as defined in section 7001, subsection 2 or other students as defined under rules by the commissioner.

Sec. 4. 20-A MRSA §6202-A, sub-§§3 and 4, as amended by PL 2003, c. 712, §2, are further amended to read:

3. Public high school graduation decisions; learning results endorsements; annual targets. ~~By the 2007-2008 school year, public high school graduation~~ Beginning with the 2007-2008 school year, each school administrative unit may award learning results endorsements in addition to the high school diploma awarded pursuant to section 4722. The awarding of the learning results endorsements must be determined by student achievement of the standards of the system of learning results in English language arts, health and physical education, mathematics, science and technology and social studies, based on the school administrative unit's local assessment system established pursuant to this section in addition to other requirements as established by school board policy. By the 2009-2010 school year, public high school graduation must be determined by student achievement of the standards of the system of learning results in all content areas of the system of learning results, based on the school administrative unit's assessment system established pursuant to subsection 1 in addition

~~to other requirements as established by policy of the school board.~~

A. By the 2009-2010 school year, learning results endorsements may be awarded to students who, at a minimum, demonstrate achievement of the content standards in English language arts and mathematics based on the school administrative unit's local assessment system.

B. By the 2010-2011 school year, learning results endorsements may be awarded to students who, at a minimum, demonstrate achievement of the content standards in English language arts, mathematics, science and technology, social studies and health and physical education based on the school administrative unit's local assessment system.

C. By the 2011-2012 school year, the awarding of learning results endorsements must be determined by student achievement of the standards of the system of learning results in each of the 8 content areas of the system of learning results based on the school administrative unit's assessment system.

Beginning with the 2007-2008 school year, the commissioner shall recommend to the Legislature annual targets for the percentage of students to whom school administrative units may award diplomas based on the awarding of credits and the percentage of students receiving learning results endorsements in addition to the high school diploma awarded pursuant to section 4722. Beginning with the 2007-2008 school year, school administrative units must include in their annual basic school approval reports to the commissioner the percentage of students receiving learning results endorsements.

4. Graduation decisions at certain private high schools; learning results endorsements; annual targets. ~~By the 2007-2008 school year, high school graduation~~ Beginning with the 2007-2008 school year, the option of learning results endorsements in addition to the high school diploma awarded pursuant to section 4722 may also be provided for publicly funded students in private schools approved for tuition that enroll at least 60% publicly funded students, as determined by the previous school year's October and April average enrollment. The awarding of learning results endorsements must be determined by student achievement of the standards of the system of learning results in English language arts, health and physical education, mathematics, science and technology, and social studies, in addition to other requirements that may be established by the trustees. By the 2009-2010 school year, high school graduation for publicly funded students in private schools must be determined by student achievement of the standards of

~~the system of learning results in all content areas of the system of learning results, in addition to other requirements as established by the trustees.~~

A. By the 2009-2010 school year, learning results endorsements may be awarded to students who, at a minimum, demonstrate achievement of the content standards in English language arts and mathematics.

B. By the 2010-2011 school year, learning results endorsements may be awarded to students who, at a minimum, demonstrate achievement of the content standards in English language arts, mathematics, science and technology, social studies and health and physical education.

C. By the 2011-2012 school year, the awarding of learning results endorsements in addition to the high school diploma for publicly funded students in private schools must be determined by student achievement of the standards of the system of learning results in each of the 8 content areas of the system of learning results, in addition to other requirements as established by the trustees.

Beginning with the 2007-2008 school year, the commissioner shall recommend to the Legislature annual targets for the percentage of students to whom private schools approved for tuition that enroll at least 60% publicly funded students may award diplomas based on the awarding of credits and the percentage of students receiving learning results endorsements in addition to the high school diploma awarded pursuant to section 4722. Beginning with the 2007-2008 school year, private schools approved for tuition that enroll at least 60% publicly funded students must include in their annual basic school approval reports to the commissioner the percentage of students receiving learning results endorsements.

Sec. 5. 20-A MRSA §6209-A is enacted to read:

§6209-A. State validation

The commissioner shall validate each school administrative unit's comprehensive education plan, as required in section 4502, subsection 1, and local assessment system, as required in section 6202-A.

1. Annual report. The commissioner shall annually report by February 1st to the joint standing committee of the Legislature having jurisdiction over education matters on the status of each school administrative unit in implementing the comprehensive education plan, as required in section 4502, subsection 1, and the local assessment system, as required in section 6202-A, including a report on the number and the percentage of learning results

endorsements awarded in addition to high school diplomas awarded pursuant to section 4722 for each of the 8 content areas of the system of learning results under section 6209.

When a report is made under this subsection for purposes of comparative analysis, the reporting mechanisms and the categories reported must be uniform for each school administrative unit.

2. Rules. The commissioner shall adopt or amend rules to implement this section by January 31, 2006. Rules adopted or amended pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 20-A MRSA §6210, as enacted by PL 2001, c. 454, §33, is amended to read:

§6210. School assistance

The Beginning in the 2005-2006 school year, the commissioner shall provide assistance to a school administrative unit when student performance in a school in the school administrative unit ~~beginning in the 2003-2004 school year~~, or when a review of the comprehensive education plan conducted under section 4504, subsection 2, indicates that assistance is needed. This assistance must be based on a thorough review of the comprehensive education plan, as required in section 4502, subsection 1, and the evidence of student performance provided by the school administrative unit's local assessment system. This may include assignment of an assistance team by the commissioner to work with the school administrative unit over a period of not less than one year. The commissioner shall pilot this process during the 2001-2002 and 2002-2003 school years and shall develop rules for school administrative unit assistance and accountability to safeguard the learning of the students in the school administrative unit.

Sec. 7. 20-A MRSA §7202, sub-§5-A is enacted to read:

5-A. Diploma requirements. Award a high school diploma to each exceptional student who successfully meets the content standards of the system of learning results, in addition to any other diploma requirements applicable to all secondary school students pursuant to section 4722, as specified by the goals and objectives of the student's individualized education plan;

Sec. 8. State validation of comprehensive education plans and local assessment systems.

It is the intent of the Legislature that the major substantive rules adopted or amended pursuant to the Maine Revised Statutes, Title 20-A, section 6209-A must include guidelines and procedures developed by the Commissioner of Education that connect the

purposes of the standards for validity and reliability to the quality standards established for the comprehensive, standards-based system of learning results.

See title page for effective date.

CHAPTER 447

H.P. 680 - L.D. 970

An Act To Improve Sentencing for Serious Offenders

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

Sec. 1. 17-A MRSA §1252, sub-§4-A, as repealed and replaced by PL 2003, c. 688, Pt. A, §14, is amended to read:

4-A. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 13 or 27 ~~or~~; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C was committed, the defendant had been convicted of 2 or more crimes violating chapter 9, 11, 13 or 27 ~~or~~; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C or essentially similar crimes in other jurisdictions, the sentencing class for the crime is one class higher than it would otherwise be. In the case of a Class A crime, the sentencing class is not increased, but the prior record must be given serious consideration by the court when imposing a sentence. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this subsection, for violations under chapter 11, the dates of prior convictions may have occurred at any time. This subsection does not apply to section 210-A if the prior convictions have already served to enhance the sentencing class under section 210-A, subsection 1, paragraph C.

Sec. 2. 17-A MRSA §1322, sub-§3, as repealed and replaced by PL 1993, c. 305, §1, is amended by amending the first paragraph to read:

3. Economic loss. "Economic loss" includes economic detriment consisting of environmental clean-up expense, property loss, allowable expense, work loss, replacement services loss and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment. "Economic loss" includes expenses of an emergency response by any public agency and critical investigation expenses.

Sec. 3. 17-A MRSA §1322, sub-§3, ¶A-1 is enacted to read:

A-1. "Critical investigation expense" means a necessary expense incurred by a government or by a victim while investigating or prosecuting suspected criminal conduct. "Critical investigation expense" is limited to the cost of an audit or other financial analysis when that analysis is necessary to determine whether and to what extent a victim has suffered financial harm from criminal conduct by an employee or other person in a position of trust and the cost of analysis of suspected illegal drugs.

See title page for effective date.

CHAPTER 448

H.P. 655 - L.D. 936

An Act To Amend the Maine Tort Claims Act

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

Sec. 1. 14 MRSA §8104-B, sub-§3, as enacted by PL 1987, c. 740, §4, is amended to read:

3. Performing discretionary function. Performing or failing to perform a discretionary function or duty, whether or not the discretion is abused and whether or not any statute, charter, ordinance, order, resolution or policy under which the discretionary function or duty is performed is valid or invalid, except that if the discretionary function involves the operation of a motor vehicle, as defined in Title 29-A, section 101, subsection 42, this section does not provide immunity for the governmental entity for an employee's negligent operation of the motor vehicle resulting in a collision, regardless of whether the employee has immunity under this chapter;

See title page for effective date.

CHAPTER 449

H.P. 270 - L.D. 357

An Act Regarding Bail Conditions

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

Sec. 1. 15 MRSA §1026, sub-§3, ¶A, as amended by PL 2001, c. 252, §2, is further amended by enacting subparagraph (10-A) to read:

(10-A) Enter and remain in a long-term residential facility for the treatment of substance abuse;