

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006

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

Penmor Lithographers
Lewiston, Maine
2006

§1065. Influenza immunizing agent distribution report

A manufacturer or distributor that ships or distributes influenza immunizing agents to or within this State shall report information on the distribution of such agents to the Maine Center for Disease Control and Prevention as provided in this section.

1. Report timing and content. A manufacturer or distributor shall report the following information on the distribution of influenza immunizing agents in this State every 2 weeks during influenza season and on a monthly basis thereafter:

A. Contact name, company name, address, phone number and e-mail address of the manufacturer or distributor that is shipping or distributing influenza immunizing agents;

B. Contact name, business name, type of provider, address, phone number and e-mail address of the licensed health care provider or facility that will receive influenza immunizing agents;

C. The date that the manufacturer or distributor ships or distributes influenza immunizing agents and date that the delivery is received by the licensed health care provider or facility that ordered influenza immunizing agents; and

D. The type, quantity and dosage of influenza immunizing agents distributed to the licensed health care provider or facility.

2. Supply and demand. The department shall estimate the supply and demand for influenza immunizing agents at the beginning of each influenza season by assessing aggregate orders; reviewing information disseminated by manufacturers, distributors and the United States Department of Health and Human Services, Centers for Disease Control and Prevention; identifying the number and location of high priority populations; identifying possible geographic and provider type disparities; and reviewing historical demand patterns.

3. Confidentiality. Information obtained by the department under this section is confidential and may not be disclosed by the department except that the department may provide information obtained under this section to a licensed health care provider or facility located in the State in order to facilitate access to influenza immunizing agents for patients of that licensed health care provider or facility that are residents of the State.

4. Rules. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

Effective May 4, 2006.

CHAPTER 629

H.P. 1398 - L.D. 1996

An Act To Prevent Unauthorized Practice of Immigration and Nationality Law

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

Whereas, the unauthorized practice of immigration and nationality law in the State has resulted in the loss of rights of and severe damages to the people of the State and constitutes an ongoing threat to those rights and the well-being of the public; 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. 4 MRSA §807-B is enacted to read:

§807-B. Authorized immigration and nationality law assistance

1. Short title. This section may be known and cited as "the Immigration and Nationality Law Assistance Act."

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

A. "Compensation" means money, property, the reciprocal exchange of services or anything else of value.

B. "Federally authorized immigration representative" means an attorney who is admitted to and in good standing before the bar of a state of the United States other than Maine, or other person who is authorized to represent another in immigration and nationality law matters to the extent allowed under federal law or regulations, including 8 Code of Federal Regulations, Section 292.1 and 1292.1 (1996), with such representa-

tion specifically limited to federal immigration and nationality law matters.

C. "Immigration and nationality law assistance" means assistance on an immigration and nationality law matter.

D. "Immigration form" means a form created by the United States Department of Homeland Security, the United States Department of Justice, the United States Department of Labor, the United States Department of State or other federal agency charged with implementing federal immigration and nationality laws for use in an immigration and nationality law matter.

E. "Immigration and nationality law matter" means any application, proceeding, filing or other action before an agency of the United States Department of Homeland Security, the United States Department of Justice, the United States Department of Labor or the United States Department of State or other federal agency charged with implementing federal immigration and nationality laws regarding the nonimmigrant, immigrant or citizenship status of or the admission to or removal from the United States of a person that arises from the application of a federal immigration and nationality law, executive order or presidential proclamation.

F. "Nonlegal immigration and nationality law assistance" is limited to:

(1) Translating from English into a customer's primary language questions on an immigration form selected by the customer so that the customer can understand the questions and does not include advising the customer as to the appropriateness of the immigration form selected by the customer or suggesting which immigration form to use;

(2) Translating from a customer's primary language into English and otherwise transcribing to an immigration form the customer's answers to questions on that form and does not include advising the customer as to the appropriateness of the immigration form selected by the customer or suggesting which immigration form to use or as to the customer's answers on that immigration form;

(3) Securing or assisting the customer to secure supporting documents currently in existence, such as birth and marriage certificates, that may be needed for submission with immigration forms and does not include drafting of affidavits or other docu-

ments that may need to accompany immigration forms; and

(4) Making referrals for legal representation with respect to an immigration and nationality law matter to an attorney admitted to and in good standing before the bar of the State or to a federally authorized immigration representative duly authorized by federal law and regulations to undertake such representation.

3. Nonlegal immigration and nationality law assistance authorized. A person offering immigration and nationality law assistance may offer or provide only nonlegal immigration and nationality law assistance, except, however, that an attorney admitted to and in good standing before the bar of the State or a federally authorized immigration representative may provide immigration and nationality law assistance in the form of representation to the extent authorized by federal laws and regulations in immigration proceedings before agencies of the United States Department of Homeland Security, the United States Department of Justice, the United States Department of Labor or the United States Department of State or other federal agency charged with carrying out the implementation of federal immigration and nationality laws.

Nothing in this section is intended to nor does it authorize either an attorney who is not admitted to and in good standing before the bar of the State or a federally authorized immigration representative to offer legal opinions or general legal advice regarding state laws or to represent another before any state court, administrative agency or other forum charged with interpreting or implementing state laws.

4. Prohibited activities. In the course of dealing with customers or prospective customers, a provider of immigration and nationality law assistance may not:

A. Make a statement that the provider of immigration and nationality law assistance can or will obtain special favors from or has special influence with an agency or a tribunal of the United States Government or of any state government;

B. Retain compensation for services not performed;

C. Refuse to return documents supplied by, prepared by, paid for by or obtained on behalf of the customer and requested by the customer, regardless of whether there is outstanding compensation owed to the provider of immigration and nationality law assistance by the customer or a fee dispute between the provider of immigration and nationality law assistance and the customer;

D. Fail to complete and sign, in the space provided, an immigration form that requests the preparer's name, address, telephone number or signature, even if the provider of immigration and nationality law assistance has only provided nonlegal immigration and nationality law assistance in the preparation of the immigration form;

E. Provide legal advice regarding immigration and nationality law matters, including selecting immigration forms for a customer or advising a customer as to the appropriateness of the forms the customer has selected or as to the customer's answers to the questions on the forms, unless the provider of immigration and nationality law assistance is an attorney admitted to and in good standing before the bar of the State or is a federally authorized immigration representative; or

F. Represent or advertise or provide notice in any way or manner, including, but not limited to, the assertion of a title or credential such as "notario," "immigration consultant," "immigration agent," "immigration assistant" or "attorney," that could cause a customer to believe that the provider of immigration and nationality law assistance is authorized to practice law in the State or possesses special skill or expertise in immigration and nationality law matters unless the provider is an attorney admitted to and in good standing before the bar of the State or is a federally authorized immigration representative. A federally authorized immigration representative whose principal place of business is in the State shall give verbal notice to customers that the federally authorized immigration representative is not an attorney admitted to the bar of the State and may not give general legal advice or representation under state law and shall also include language in any written advertisement, notice or contract for services that clearly conveys that the federally authorized immigration representative is not an attorney admitted to practice law in the State and may not give general legal advice or assistance under state law.

5. Unfair method of competition or unfair and deceptive act or practice. A violation of this section substantially affects the public interest and constitutes an unfair method of competition and a deceptive act or practice in the conduct of trade or commerce for purposes of the Maine Unfair Trade Practices Act.

6. Civil violation. A violation of this section constitutes a civil violation for which a fine of not more than \$5,000 may be adjudged.

7. Civil Action. In addition to any other remedy that may be available, a customer who is aggrieved by

a violation of this section may initiate a civil action in the Superior Court against the violator for injunctive relief or damages or both. If the court finds a violation of this section, the court may award to the customer:

A. An amount equal to actual damages sustained by the customer as a result of the violation;

B. An amount equal to 3 times the actual damages; and

C. The costs of the action together with reasonable attorney's fees as determined by the court.

8. Attorney General action; report. Whenever the Attorney General has reason to believe that a person within the State has engaged in or is engaging in activities that violate this section, the Attorney General may initiate an action in the Superior Court to enforce this section. The Attorney General, by January 1, 2007, and every January 1st thereafter, shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters on the number and circumstances of all investigations that the Department of the Attorney General has initiated in the preceding year relating to violations of this section.

Sec. 2. 4 MRSA §955-C, sub-§1, ¶C, as enacted by PL 1997, c. 712, §2, is amended to read:

C. The notary public is in violation of section 954-A or section 960; or

Sec. 3. 4 MRSA §960 is enacted to read:

§960. Advertisement of services

1. Advertisement defined. For purposes of this section, "advertisement" means material designed to promote a product or service offered by a person that is engaged in offering such products or services for profit. "Advertisement" includes business cards, brochures and notices.

2. Notice; requirements. A notary public who is not an attorney admitted to and in good standing before the bar of the State and who advertises notary services in a language other than English must include in the advertisement a notice that includes:

A. Information on the fees that the notary may charge; and

B. The following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN MAINE AND MAY NOT GIVE LEGAL ADVICE ABOUT IMMIGRATION OR ANY OTHER LEGAL MATTER OR ACCEPT FEES FOR LEGAL ADVICE."

The notice must be in both English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio, television or any other audio medium, the statement may be modified, but must include substantially the same message.

3. Prohibition. An advertisement for notary services may not include a literal translation of the phrase "Notary Public" into any language other than English if the literal translation implies that the notary public is an attorney licensed to practice in the State or in any jurisdiction of the United States. For purposes of this subsection, "literal translation" means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

4. Civil violation. Any violation of this section constitutes a civil violation for which a fine of not more than \$5,000 may be adjudged.

5. Civil action. In addition to any other remedy that may be available, a customer who is aggrieved by a violation of this section may initiate a civil action in the Superior Court against the violator for injunctive relief or damages or both. If a court finds a violation of this section, the court may award to the customer:

A. An amount equal to actual damages sustained by the customer as a result of the violation;

B. An amount equal to 3 times the actual damages; and

C. The costs of the action together with reasonable attorney's fees as determined by the court.

6. Attorney General action. Whenever the Attorney General has reason to believe that a person in the State has engaged in or is engaging in activities that violate this section, the Attorney General may initiate an action in the Superior Court to enforce this section.

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

Effective May 4, 2006.

CHAPTER 630

S.P. 783 - L.D. 2036

An Act To Facilitate the Hiring of Health Care Personnel during Emergency Circumstances

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

Sec. 1. 22 MRSA §816, sub-§1-A is enacted to read:

1-A. Health care workforce. A private institution is immune from civil penalties and liability for any actions arising from allegations of inadequate investigation prior to that institution's hiring or engagement of a licensed health care worker, including but not limited to allegations of negligent hiring, credentialing or privileging, for services provided within the scope of that health care worker's licensure in response to an extreme public health emergency as defined in section 801, subsection 4-A or a disaster as defined in Title 37-B, section 703, subsection 2 as long as the private institution hires or engages the services of the licensed health care worker in accordance with this subsection. When hiring or engaging the services of a health care worker:

A. The private institution shall first make a reasonable attempt to contact the appropriate occupational or professional licensing board within or affiliated with the Department of Professional and Financial Regulation for any available information about that health care worker; and

B. A private institution may rely on:

(1) Information available from the occupational and professional licensing boards within or affiliated with the Department of Professional and Financial Regulation regarding appropriate screening of the worker, such as background investigation, primary source verification or credentialing;

(2) The representation of a volunteer health care worker registry that is operated or certified in accordance with federal or state requirements regarding appropriate screening of the worker that is registered on that registry, such as background investigation, primary source verification or credentialing;

(3) The representation of the employing or privileging entity regarding appropriate screening of the worker that, at the time of hiring or engagement, is employed or privileged by any entity in any state, such as background investigation, primary source verification, credentialing or privileging; or

(4) The representation of a retired or unemployed worker's most recent employer or privileging entity if that employment or