

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

FIRST SPECIAL SESSION
April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 2008

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 18, 2008

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

Penmor Lithographers
Lewiston, Maine
2008

4. Enforcement. This section may be enforced in a civil action brought by the Attorney General under the Maine Unfair Trade Practices Act, except that the following provisions apply as penalties for violations of this section.

A. For the first violation by a manufacturer a warning must be given instead of an enforcement by the Attorney General if the employer has the equivalent of 25 or fewer full-time, year-round employees.

B. For all other violations the following provisions apply as penalties for violations of this section.

(1) For the first violation of this section, the penalty is not more than \$100 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$5,000.

(2) For a 2nd violation of this section, the penalty is not more than \$500 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$25,000.

(3) For a 3rd or subsequent violation of this section, the penalty is not more than \$1,000 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$50,000.

(4) A penalty under this section may be waived by the court if it is determined that the person in good faith and with due diligence attempted to comply with the requirements of this section and promptly corrected after discovery any noncompliance with this section.

5. Lead Poisoning Prevention Fund. Penalties collected under this section must be paid to the Lead Poisoning Prevention Fund established pursuant to section 1322-E.

Sec. 2. Report. The Department of Health and Human Services, Maine Center for Disease Control and Prevention shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 15, 2010 regarding lead in children's toys and products. The report must include developments on the federal level and in other states with regard to protecting children from lead poisoning from children's toys and products, thresholds for lead in children's toys and products and a summary of literature on lead poisoning from children's toys and products. The joint standing committee may submit a bill to the Second Regular Session of the 124th Legislature based on the report.

Sec. 3. Effective date. This Act takes effect July 1, 2009.

Effective July 1, 2009.

CHAPTER 605

H.P. 1428 - L.D. 2044

An Act To Prohibit Health Care Facilities from Charging for Treatment To Correct Mistakes or Preventable Adverse Events

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

Sec. 1. 22 MRSA §1721 is enacted to read:

§1721. Prohibition on payment for health care facility mistakes or preventable adverse events

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

A. "Health care facility" means a hospital or ambulatory surgical center licensed under chapter 405.

B. "Mistake or preventable adverse event" means any of the following events that is within the health care facility's control to avoid:

- (1) Surgery performed on the wrong body part;
- (2) Surgery performed on the wrong patient;
- (3) The wrong surgical procedure performed on a patient;
- (4) Unintended retention of a foreign object in a patient after surgery or another procedure;
- (5) Intraoperative or immediately postoperative preventable death of a patient classified as a normal healthy patient under guidelines published by a national association of anesthesiologists;
- (6) Patient death or serious disability caused by the use of contaminated drugs, devices or biologics provided by a hospital or ambulatory surgical center;
- (7) Patient death or serious disability caused by the use or function of a device in patient care in which the device is used for functions other than as intended;

(8) Patient death or serious disability caused by an intravascular air embolism that occurs while being cared for in a health care facility;

(9) An infant's being discharged to the wrong person;

(10) Patient death or serious disability caused by a patient's elopement for more than 4 hours;

(11) Patient suicide or attempted suicide resulting in serious disability while being cared for in a health care facility;

(12) Patient death or serious disability caused by a medication error such as an error involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation or wrong route of administration;

(13) Patient death or serious disability caused by a hemolytic reaction due to the administration of incompatible blood or blood products;

(14) Maternal death or serious disability caused by labor or delivery in a low-risk pregnancy, labor and delivery while being cared for in a health care facility;

(15) Patient death or serious disability caused by hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility;

(16) Death or serious disability caused by failure to identify and treat hyperbilirubinemia in neonates prior to discharge;

(17) Stage 3 or 4 pressure ulcers acquired after admission to a health care facility;

(18) Patient death or serious disability due to spinal manipulative therapy;

(19) Patient death or serious disability caused by an electric shock while being cared for in a health care facility;

(20) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances;

(21) Patient death or serious disability caused by a burn incurred from any source while being cared for in a health care facility;

(22) Patient death caused by a fall by a patient who was or should have been identified as requiring precautions due to risk of falling while being cared for in a health care facility;

(23) Patient death or serious disability caused by the use of restraints or bedrails while being cared for in a health care facility;

(24) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist or other licensed health care provider;

(25) Abduction of a patient of any age;

(26) Sexual assault of a patient within a health care facility;

(27) Death or significant injury of a patient resulting from a physical assault that occurs within a health care facility; and

(28) Artificial insemination with the wrong donor sperm or donor egg.

2. Prohibition. A health care facility is prohibited from knowingly charging a patient or the patient's insurer for health care services it provided as a result of or to correct a mistake or preventable adverse event caused by that health care facility.

3. Patient education. A health care facility is required to inform patients of the prohibition on payment for health care facility mistakes or preventable adverse events.

See title page for effective date.

CHAPTER 606

H.P. 1422 - L.D. 2038

An Act To Establish the Shellfish Advisory Council and To Improve the Process of Reopening Clam Flats

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

Whereas, the establishment of a shellfish advisory council is paramount for the proper management of Maine's shellfish resources to ensure the safe consumption of shellfish and the health of the shellfish industry; 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:

PART A

Sec. A-1. 5 MRSA §12004-I, sub-§57-G is enacted to read: