

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2008 to June 13, 2009**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 12, 2009**

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

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**Augusta, Maine**  
**2009**

history record check are the responsibility of the applicant and must be submitted with the fingerprints. Criminal history records provided to the commissioner under this section are confidential. The results of criminal records checks received under this subsection may only be used in determining an applicant's eligibility for licensure. A person with a prior criminal conviction is not eligible for licensure.

**4. License issued.** Upon review and approval of an application, the commissioner shall notify the applicant and request that the application fee determined under subsection 7 be submitted. Upon receipt of the appropriate fee and in accordance with subsection 8, the commissioner shall issue a license, which is valid for a period of one year and only for the site or sites specified in the license.

**5. Documentation.** A licensee shall file with the commissioner documentation indicating that the seeds planted were of a type and variety of hemp approved by the commissioner as having a concentration of no more than 0.3% delta-9-tetrahydrocannabinol by dry weight and a copy of any contract to grow industrial hemp. A licensee shall notify the commissioner of the sale or distribution of industrial hemp grown by the licensee and the name of each person to whom the industrial hemp was sold or distributed.

**6. Rules.** The commissioner shall adopt rules to establish approved varieties of industrial hemp, protocols for testing plant parts during growth for delta-9-tetrahydrocannabinol levels and guidelines for monitoring the growth and harvest of industrial hemp. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**7. Fees.** The commissioner shall establish through rulemaking under subsection 6 an application fee, a license fee and per acre fees for monitoring, sampling and testing that are reasonable and necessary to cover the costs of the department.

All fees received pursuant to this subsection must be paid to the Treasurer of State and credited to a separate, nonlapsing account in the department. Money received pursuant to this subsection must be used for the expenses of administering this chapter.

**8. Licensing contingent upon action by Federal Government.** A license may not be issued under this section unless:

A. The United States Congress excludes industrial hemp from the definition of "marihuana" for the purpose of the Controlled Substances Act, 21 United States Code, Section 802(16); or

B. The United States Department of Justice, Drug Enforcement Administration takes affirmative steps towards issuing a permit under 21 United States Code, Chapter 13, Subchapter 1, Part C to a

person holding a license issued by a state to grow industrial hemp.

The commissioner shall notify the Revisor of Statutes and the Commissioner of Public Safety when the requirements of either paragraph A or B have been met.

See title page for effective date.

## CHAPTER 321

### S.P. 105 - L.D. 341

#### An Act To Amend the Department of Health and Human Services' Progressive Treatment Program

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

**Sec. 1. 34-B MRSA §3873, sub-§2, ¶B,** as enacted by PL 2005, c. 519, Pt. BBBB, §14 and affected by §20, is amended to read:

B. The person must:

- (1) Be ~~24~~ 18 years of age or older;
- (2) Have been clinically determined to be suffering from a severe and persistent mental illness;
- (3) Have been under an order of involuntary commitment to a state mental health institute at the time of filing of the application for progressive treatment; and
- (4) Have been clinically determined to be in need of the progressive treatment program in order to prevent interruptions in treatment, relapse and deterioration of mental health and to enable the person to survive safely in a community setting in the reasonably foreseeable future without posing a likelihood of serious harm as defined in section 3801, subsection 4, paragraph D. A determination under this subparagraph must be based on current behavior, treatment history, documented history of positive responses to treatment while hospitalized, relapse and deterioration of mental health after discharge and inability to make informed decisions regarding treatment.

**Sec. 2. 34-B MRSA §3873, sub-§3,** as enacted by PL 2005, c. 519, Pt. BBBB, §14 and affected by §20, is amended to read:

**3. Duration of participation.** Except as provided in subsections 4 and 5, participation in the progressive treatment program must be for ~~a term~~ an initial period of 6 months or an extension of participation of 6 months. The District Court may not order partici-

pation in the progressive treatment program for longer than 12 months consecutively. Participation ends if a person successfully completes the program in accordance with subsection 4 or is hospitalized pursuant to a court order entered under subsection 5. Participation in the program is temporarily suspended if the person is voluntarily rehospitalized and recommences upon discharge from the hospital.

**Sec. 3. 34-B MRSA §3873, sub-§3-A** is enacted to read:

**3-A. Extension of participation.** Prior to the end of the initial period of participation under subsection 3, the District Court may order an extension of participation for 6 months for a person who is eligible under this subsection.

A. A person is eligible for an extension of participation if the person is a participant in the progressive treatment program and meets the requirements of subsection 2, paragraph B, subparagraphs (1), (2) and (4).

B. The assertive community treatment team providing treatment and care for the person shall determine whether the person is eligible for an extension of participation and whether an extension of participation is in the best interest of the person and shall complete a certificate stating those conclusions if they are in the affirmative and the basis for the conclusions.

C. A physician, psychologist, certified psychiatric nurse specialist or nurse practitioner who is a member of the assertive community treatment team shall file with the District Court:

- (1) The certificate completed under paragraph B;
- (2) An application for an extension of participation; and
- (3) A written statement certifying that a copy of the application and certificate under paragraph B have been given personally to the person and that the person has been notified of the right to retain an attorney or to have an attorney appointed.

D. The following procedures apply when an application for an extension of participation has been filed under paragraph C:

- (1) The assertive community treatment team shall give notice personally to the person, including a copy of the certificate completed under paragraph B; and
- (2) The person must be afforded an opportunity to be represented by counsel, and if neither the person nor others provide counsel, the court shall appoint counsel for the person.

E. The District Court shall:

- (1) Provide notice in accordance with section 3864, subsection 3;
- (2) Provide notice to the person of the right to counsel, including the right to court-appointed counsel, and if neither the person nor others have provided counsel, the court shall appoint counsel for the person;
- (3) Provide notice to the person of the right to select an examiner for the mental health examination under subparagraph (4);
- (4) Provide a mental health examination by 2 examiners, each of whom must be a licensed physician or a licensed clinical psychologist, in accordance with section 3864, subsection 4, paragraph A, subparagraph 2-A;
- (5) Hold a hearing in accordance with section 3864, subsection 5, paragraphs A, C, G and H;
- (6) Make a determination of whether the person is eligible for an extension of participation and whether an extension of participation is in the best interest of the person, based on findings stated in the record; and
- (7) If the District Court finds that the person is eligible for an extension of participation and that an extension of participation is in the best interest of the person, the District Court shall enter an order extending participation for 6 months. If the District Court finds that the person is not eligible for an extension of participation or that an extension of participation is not in the best interest of the person, the District Court shall dismiss the application.

F. The provisions of section 3864, subsections 10 and 11 apply to expenses and the right of appeal.

**Sec. 4. 34-B MRSA §3873, sub-§4**, as enacted by PL 2005, c. 519, Pt. BBBB, §14 and affected by §20, is amended to read:

**4. Successful completion.** A person who fully participates in the program and who follows the individualized treatment plan successfully completes the program upon expiration of 6 months or the 6-month period of extension ordered by the court under subsection 3-A or upon certification by the assertive community treatment team physician or psychologist that the person is no longer in need of the services of the program.

**Sec. 5. Report.** By January 1, 2010 the Department of Health and Human Services shall provide a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the following:

1. The needs of persons who are eligible to participate in the progressive treatment program under the Maine Revised Statutes, Title 34-B, section 3873, the needs of persons who are participating in the progressive treatment program and the resources available to meet those needs;

2. The costs of community-based care and hospitalization in community hospitals and state mental health institutes for persons who would be eligible to participate in the progressive treatment program; and

3. An analysis of implementation of the progressive treatment program for persons who were hospitalized at the state mental health institutes, including measurable outcomes.

See title page for effective date.

**CHAPTER 322**

**S.P. 474 - L.D. 1292**

**An Act To Provide More  
Transparency and Protection  
for Public Employees in the  
Laws Governing the Maine  
Public Employees Retirement  
System**

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

**Sec. 1. 5 MRSA §17054, sub-§3**, as amended by PL 1993, c. 386, §2, is further amended to read:

**3. Recovery of overpayments by the retirement system.** Any amounts due the retirement system as the result of overpayment or erroneous payment of benefits, an excess refund of contributions or overpayment or erroneous payment of life insurance benefits may be recovered from an individual's contributions, any benefits or life insurance benefits payable under this Part to the individual or the beneficiary of the individual or any combination of contributions and benefits. If the overpayment or excess refund of contributions resulted from ~~an unintentional~~ a mistake of or incorrect information provided by an employee of the retirement system, or a mistake of the retiree or the recipient of the benefit or life insurance benefit, no a penalty or interest may not be collected assessed by the retirement system ~~on the amount to be recovered~~. In all cases of recovery of overpayments through the reduction of a retirement benefit, whether with or without the assessment of interest by the retirement system, the recovery practices must be reasonable and consider the personal economic stability of the retiree in the establishment of the recovery schedule. The executive director may also take action to recover those amounts due from any amounts payable to the individual by any other state agency or by an action in

a court of competent jurisdiction. Whenever the executive director makes a decision to recover any amounts under this subsection, that decision is subject to appeal under section 17451; ~~and.~~

Employers are responsible for enrolling employees in the correct retirement plan. The retirement system shall provide training, education and information to assist employers in the correct enrollment of employees. If an employee is enrolled in the incorrect retirement plan by the employer through no fault of the employee, the employee may not lose any retirement benefits. The State is not responsible for the employer contribution when the employer is a school district, municipality or county and those contributions and assessed interest, if applicable, must be paid to the retirement system by the school district, municipality or county; and

**Sec. 2. 5 MRSA §17103, sub-§6**, as amended by PL 2007, c. 491, §77, is further amended to read:

**6. Rights, credits and privileges; decisions.** The board shall in all cases make the final and determining administrative decision in all matters affecting the rights, credits and privileges of all members of all programs of the retirement system whether in participating local districts or in the state service.

Whenever the board finds that, because of an error or omission on the part of the employer of a member or retired member, a member or retired member is required to make a payment or payments to the retirement system, the board may waive payment of all or part of the amount due from the member or retired member. In these instances of recovery of overpayments from members of the retirement system, the retirement system is governed by section 17054, subsection 3.

**Sec. 3. 5 MRSA §17103, sub-§6-A** is enacted to read:

**6-A. Communication between the board and members of the retirement system.** Communications between the board and members of the retirement system are governed by this subsection.

A. The board shall make all members aware of the requirements in law or rule and any changes to these requirements governing retirees, disability benefits and any other benefits provided by the retirement system. All retirement information provided to retirement system members must be provided by highly competent individuals well-trained and knowledgeable about the benefits and requirements of the retirement system in both law and rules, including requirements to qualify for disability retirement, and including information provided by individuals representing participating local districts to members. The board shall provide applicants for retirement or disability status with materials summarizing the most significant