

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2010 to April 12, 2010

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 12, 2010

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

Augusta, Maine
2010

under this Part. Notwithstanding any other provision of law, the State Budget Officer shall calculate the amount of the funding adjustments identified in section 2 of this Part that applies to any other MaineCare General Fund account in the Department of Health and Human Services and shall transfer the amounts by financial order upon the approval of the Governor. These transfers are considered adjustments to appropriations in fiscal year 2010-11.

Sec. RRRR-2. Appropriations and allocations. The following appropriations and allocations are made.

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF (FORMERLY DHS)**

Medical Care - Payments to Providers 0147

Initiative: Provides funds to adjust and restore MaineCare rates for services subject to the 10% reduction, where necessary and applicable, to actuarially based rates.

GENERAL FUND	2009-10	2010-11
All Other	\$0	\$1,386,923
	\$0	\$1,386,923
GENERAL FUND TOTAL	\$0	\$1,386,923
FEDERAL EXPENDITURES FUND	2009-10	2010-11
All Other	\$0	\$2,990,855
	\$0	\$2,990,855
FEDERAL EXPENDITURES FUND TOTAL	\$0	\$2,990,855
FEDERAL EXPENDITURES FUND ARRA	2009-10	2010-11
All Other	\$0	\$234,536
	\$0	\$234,536
FEDERAL EXPENDITURES FUND ARRA TOTAL	\$0	\$234,536

PART SSSS

Sec. SSSS-1. Department of Health and Human Services to establish rate structure with 2 levels of crisis services. The Department of Health and Human Services shall establish a rate structure that supports 2 levels of crisis services. The department shall establish a higher rate for a comprehensive, high-quality integrated crisis service system for children and adults that simplifies intake for clients, provides for consumer participation and a single telephone hotline with triage to a "warm line" and supports community-based services as a preferred setting. The department shall establish a lower rate for crisis

services that do not meet the higher level of service. The department shall adopt rules, which are routine technical rules pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, that describe 2 service levels.

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

Effective March 31, 2010.

CHAPTER 572

H.P. 875 - L.D. 1256

**An Act To Provide Protections
for Consumers Subject to
Mandatory Arbitration
Clauses**

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

Sec. 1. 10 MRSA §1391, sub-§1, as enacted by PL 2007, c. 250, §1 and amended by c. 273, Pt. B, §6, is repealed.

Sec. 2. 10 MRSA §1391, sub-§2, as enacted by PL 2007, c. 250, §1, is amended to read:

2. Consumer. "Consumer" means an individual who uses, purchases, acquires, attempts to purchase or acquire or is offered or furnished ~~credit or a loan~~ goods or services, other than insurance, for personal, family or household purposes.

Sec. 3. 10 MRSA §1391, sub-§4, as enacted by PL 2007, c. 250, §1, is amended to read:

4. Consumer arbitration agreement. "Consumer arbitration agreement" means a standard contract with a consumer concerning the use of, purchase of, acquisition of, attempt to purchase or acquire, offer of or furnishing of ~~credit or a loan~~ goods or services, other than insurance, for personal, family or household purposes.

Sec. 4. 10 MRSA §1391, sub-§4-A is enacted to read:

4-A. Financial interest. "Financial interest" means holding a position in a business as an officer, director, trustee, member or partner or any position in management or ownership of more than 5% interest in the business.

Sec. 5. 10 MRSA §1392, as enacted by PL 2007, c. 250, §1, is repealed.

Sec. 6. 10 MRSA §1393 is enacted to read:

§1393. Consumer arbitration agreements

1. Limitation on agreements. A consumer arbitration agreement not allowed under federal law is void and unenforceable.

2. Costs and fees. In a provider's initial notice or communication to a consumer, the provider must clearly and conspicuously disclose the estimated expenses of any arbitration, including:

- A. The filing fee;
- B. The average daily cost for an arbitrator and hearing room;
- C. Any other charge that an arbitrator or provider may assess; and
- D. The proportion of expenses listed under this subsection borne by each party if the consumer prevails and if the consumer does not prevail.

An expense required to be disclosed under this subsection does not include attorney's fees. A person required to disclose an expense under this subsection does not violate this subsection when an actual expense exceeds an estimate if the estimate was reasonable and made in good faith.

3. Violation. A violation of subsection 2 does not render the consumer arbitration agreement unenforceable but may be considered by a court in a determination of whether the agreement is unconscionable or otherwise unenforceable under another law. If a provider violates subsection 2, a person or the Attorney General may request a court of competent jurisdiction to enjoin the provider in violation from violating subsection 2 in a subsequent consumer arbitration. A provider found to be in violation of this section or that conforms to this section after an action is commenced is liable for the court costs and reasonable attorney's fees of the party bringing the action.

Sec. 7. 10 MRSA §1394 is enacted to read:

§1394. Arbitration service providers

1. Providers of consumer arbitrations. Beginning January 1, 2011, a provider shall collect, publish at least quarterly and make available to the public in a computer-searchable format, which must be available on the publicly accessible website of the provider, if any, and on paper upon request, all of the following information for each consumer arbitration with which the provider was involved:

- A. The name of the nonconsumer party, if the nonconsumer party is a corporation or other business entity;
- B. The type of dispute involved, such as goods, banking, wireless communications, health care, debt collection and employment;
- C. If the dispute involved employment, the amount of the employee's annual wage divided into the following ranges:

- (1) Less than \$100,000;
- (2) From \$100,000 to \$250,000; or
- (3) More than \$250,000;

D. Whether the consumer was the prevailing party;

E. The number of times a business that is a party to the consumer arbitration had previously been a party to a mediation or arbitration in which the provider was involved;

F. Whether the consumer was represented by an attorney;

G. The dates the provider received the demand for arbitration, the arbitrator was appointed and the disposition of the arbitration was rendered;

H. The type of disposition of the arbitration, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default and dismissal without hearing;

I. The amount of the claim and the amount of any award or relief granted;

J. The name of the arbitrator, the amount of the arbitrator's fee for the arbitration and the percentage of the arbitrator's fee allocated to each party; and

K. Whether the provider has or within the preceding year had a financial interest in a party or the legal representation of a party in the arbitration or a party or legal representative of a party in the arbitration has or within the preceding year had a financial interest in the provider.

Once the information is published and made available, it must remain available for at least 5 years. If the information required by this subsection is available in a computer-searchable format and downloadable for free on the provider's publicly accessible website, the provider may charge a requestor for the cost of copying the information on paper. If the information required by this subsection is not available for free on the provider's publicly accessible website, the provider may not charge a requestor for the information in paper form.

2. Notice to Attorney General; links on website. A provider that provides arbitration services in this State shall notify the consumer protection division of the Office of the Attorney General in writing of any website upon which the information required under subsection 1 is posted. The provider shall inform the consumer protection division of the Office of the Attorney General if it discontinues the use of any website previously reported. The Attorney General shall include the links to the providers on the Attorney General's publicly accessible website.

3. Liability in providing information. A provider has no liability for collecting, publishing or distributing the information required under subsection 1.

See title page for effective date.

CHAPTER 573

S.P. 605 - L.D. 1598

An Act To Strengthen the Laws against Cruelty to Animals

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

Sec. 1. 17 MRSA §1021, sub-§5-A, as amended by PL 2007, c. 702, §44, is further amended to read:

5-A. Seizure by state humane agent or state veterinarian without court order. A state humane agent or a state veterinarian who has reasonable cause to believe that a violation of section 1031 or 1032 has taken place or is taking place may take possession of and retain the cruelly treated animal. Upon taking possession of an animal under this section, the humane agent or the state veterinarian shall present the owner with a notice that:

- A. States the reason for seizure;
- B. Gives the name, address and phone number of the humane agent or the state veterinarian to contact for information regarding the animal; and
- C. Advises the owner of the ensuing court procedure.

If the owner can not be found, the humane agent or the state veterinarian shall send a copy of the notice to the owner at the owner's last known address by certified mail, return receipt requested. If the owner is not known or can not be located, the humane agent or the state veterinarian shall contact the animal shelter or shelters used by the municipality in which the animal was found. The humane agent or the state veterinarian shall provide the shelter with a description of the animal, the date of seizure and the name of a person to contact for more information.

Within 3 working days of possession of the animal, the humane agent or the state veterinarian shall apply to the court for a possession order. Upon good cause shown, the court shall expedite the case and schedule a prehearing conference to take place within 7 days of the seizure. The court shall set a hearing date and that hearing date must be within 21 days of the date the animal was seized. The humane agent or the state veterinarian shall arrange care for the animal, including medical treatment, if necessary, pending the hearing.

The humane agent or the state veterinarian shall notify the owner, if located, of the time and place of the hearing. If the owner has not been located, the court shall order a notice to be published at least once in a newspaper of general circulation in the county where the animal was found stating the case and circumstances and giving 48 hours notice of the hearing.

It is the owner's responsibility at the hearing to show cause why the animal should not be seized permanently or disposed of humanely. If it appears at the hearing that the animal has been abandoned or cruelly treated by its owner, the court shall declare the animal forfeited and order its sale, adoption or donation or order the animal to be disposed of humanely if a veterinarian determines that the animal is diseased or disabled beyond recovery. In the case of an expedited hearing, the court shall issue a writ of possession or return the animal to its owner within 30 days of the seizure.

For an expedited hearing, the State, prior to the prehearing conference, shall submit all veterinary records, reports by investigating officers and other relevant records in the State's possession to the court and shall mail or deliver copies of these same reports and records to the owner of the animal.

All veterinary records, seizure reports prepared by humane agents, police reports, witness statements or other written documents are admissible as evidence when the authors of these documents are available for cross-examination at a possession hearing. Oral statements of a witness included in a police report are only admissible if the witness is present at the possession hearing.

Sec. 2. 17 MRSA §1031, sub-§3-B, ¶A, as amended by PL 2007, c. 439, §37, is further amended to read:

- A. In addition to any other penalty authorized by law, the court shall impose a fine of not less than \$500 for each violation of this section. The court may order the defendant to pay the costs of the care, housing and veterinary medical treatment for the animal including the costs of relocating the animal.

Sec. 3. 17-A MRSA §1201, sub-§1, ¶A-1, as amended by PL 2007, c. 577, §4, is further amended to read:

- A-1. The conviction is for a Class D or Class E crime other than:
 - (1) A Class D or Class E crime relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C