

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.

Augusta, Maine
2009

with brain injuries to the Second Regular Session of the 124th Legislature.

See title page for effective date.

CHAPTER 113

S.P. 188 - L.D. 489

Resolve, Regarding Continuity of Care in the Child Development Services System

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 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, immediate resolution of eligibility and other issues is necessary for children with disabilities affected by this resolve; and

Whereas, the Department of Education must engage in emergency major substantive rulemaking to resolve these issues for children with disabilities; and

Whereas, there is an immediate need to ensure that emergency implementation of rules be undertaken to minimize any harm that might come to children as a result of application of current practices; and

Whereas, immediate enactment of this resolve is necessary to direct the Department of Education to engage in emergency major substantive rulemaking to resolve these issues; 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

Sec. 1. Department of Education to amend rules. Resolved: That, in order to ensure continuity of care, the Department of Education shall amend its rules governing special education to provide that:

1. The Individualized Educational Program Team make a determination about extended school year services at every Individualized Educational Program Team meeting;

2. The Individualized Educational Program Team may make a determination about extended school year services based on available data, including information about a child's disability, even if an interruption in service has not occurred;

3. In accordance with the federal Individuals with Disabilities Education Improvement Act of 2004, 20 United States Code, Sections 1400 to 1485 (2008), a regional site may not unilaterally limit the duration of extended school year services; and

4. Initial evaluations for special education must include procedures to determine whether a child is a child with a disability, as defined in 20 United States Code, Section 1401 (2008), within 60 calendar days of receiving parental consent for children in the Child Development Services System and within 45 school days of receiving parental consent for children in public schools and that the department may, as part of the rule-making process and in a manner consistent with major substantive rulemaking, further amend its rules to adjust timelines in the Child Development Services System to be consistent with this section; and be it further

Sec. 2. Emergency major substantive rules. Resolved: That the Department of Education shall adopt emergency major substantive rules pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A as soon as practicable but not later than June 30, 2009 to implement the provisions of section 1.

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

Effective June 9, 2009.

CHAPTER 114

H.P. 349 - L.D. 494

Resolve, Regarding Legislative Review of Portions of Chapter 22: Standards for Outdoor Application of Pesticides by Powered Equipment in Order To Minimize Off-target Deposition, a Major Substantive Rule of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control

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 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 22: Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-target Deposition, a provisionally adopted major substantive rule of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized but only if the following revisions are made:

1. The provision that a detectable pesticide residue in a sensitive area likely to be occupied is considered prima facie evidence that pesticides were not applied in a manner to minimize pesticide drift is removed and replaced with a provision that pesticide residues in a sensitive area likely to be occupied that are 1% or greater of the intended residue in the target area is prima facie evidence that the applicator did not apply the pesticides in a manner to minimize pesticide drift to the maximum extent practicable;

2. The language regarding prima facie evidence is rewritten to clarify that detection of residue is not prima facie evidence of a violation but rather evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The board must review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred;

3. Specific distances for buffer zones must be removed from the rule, allowing site-specific buffer zones to be used; and

4. That section of the rule that establishes documentation of human illness as a standard of harm must be revised to state that for this standard to be met the board must receive verification from 2 physicians that an individual has experienced a negative health effect from exposure to an applied pesticide and that the effect is consistent with epidemiological documentation of human sensitivity to the applied pesticide.

The Board of Pesticides Control is not required to hold hearings or conduct other formal proceedings

prior to finally adopting the rule in accordance with this resolve.

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

Effective June 9, 2009.

CHAPTER 115

H.P. 674 - L.D. 972

Resolve, Regarding Legislative Review of Portions of Chapter 28: Notification Provisions for Outdoor Pesticide Applications, a Major Substantive Rule of the Board of Pesticides Control

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 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 28: Notification Provisions for Outdoor Pesticide Applications, a provisionally adopted major substantive rule of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is not authorized.

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

Effective June 9, 2009.