

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2010 to June 29, 2011**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 28, 2011**

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

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**Augusta, Maine**  
**2011**

**8. Utility corporation.** "Utility corporation" means a utility that is not a public utility, as defined in Title 35-A, section 102, or a person, firm or corporation subject to the jurisdiction of the Federal Communications Commission.

**Sec. 3. 32 MRSA §1102, sub-§1-A,** as amended by PL 1999, c. 657, §13, is repealed and the following enacted in its place:

**1-A. Public utility.** An entity subject to the jurisdiction of the Public Utilities Commission, the Federal Energy Regulatory Commission or the Federal Communications Commission, including all employees of such an entity, but only to the extent the entity or its employees are making electrical installations in furtherance of providing its authorized service or activities incidental to that authorized service. This exception does not apply to:

A. Installations, other than installation of a meter, inside a customer's building;

B. Installations of mobile home service equipment; and

C. Installations at any business office of a utility corporation that is not physically located adjacent to the utility's generation or transmission and distribution plant;

**Sec. 4. 32 MRSA §1102, sub-§1-B** is enacted to read:

**1-B. Aboveground electric lines.** Electrical work in connection with the construction, installation, operation, repair or maintenance of any aboveground electric line capable of operating at one kilovolt or more.

**Sec. 5. 32 MRSA §1102, sub-§1-C** is enacted to read:

**1-C. Contractor.** An entity, including all employees of such an entity, to the extent the entity has contracted with a public utility, as described in this section, to perform services for the public utility, but only to the extent the public utility would be exempt from this chapter if it were performing the services directly through its employees; or

**Sec. 6. 32 MRSA §1102, sub-§2,** as amended by PL 1999, c. 386, Pt. F, §2, is repealed.

**Sec. 7. 32 MRSA §1102-B, sub-§5, ¶B,** as enacted by PL 1981, c. 432, §2, is amended to read:

B. The electrical work and equipment employed in connection with the construction, installation, operation, repair or maintenance of any utility by a public utility corporation, or by a contractor working on behalf of a public utility as set forth in section 1102, subsection 1-C, in rendering its authorized service or in any way incidental thereto;

**Sec. 8. 32 MRSA §1102-B, sub-§5, ¶B-1** is enacted to read:

**B-1.** The electrical work and equipment employed in connection with an aboveground electric line described in section 1102, subsection 1-B;

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

Effective June 10, 2011.

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## CHAPTER 291

### H.P. 699 - L.D. 939

#### An Act To Enhance Mandated Reporting and Prosecution of Elder Abuse, Neglect and Exploitation

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

**Sec. 1. 22 MRSA §3472, sub-§6,** as amended by PL 2003, c. 653, §2, is further amended to read:

**6. Dependent adult.** "Dependent adult" means an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. "Dependent adult" includes, but is not limited to, any of the following:

A. A resident of a nursing home licensed or required to be licensed under section 1817;

B. A resident of a facility providing assisted living services licensed or required to be licensed pursuant to section 7801; or

C. A person considered a dependent person under Title 17-A, section 555; or

D. A person, regardless of where that person resides, who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the person suffers from a significant limitation in mobility, vision, hearing or emotional or mental functioning.

**Sec. 2. 22 MRSA §3477, sub-§1,** as amended by PL 2007, c. 577, §5, is further amended to read:

**1. Report required.** The following persons immediately shall report to the department when the person knows or has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation likely to be abused, neglected or exploited:

A. While acting in a professional capacity:

- (1) An allopathic or osteopathic physician;
- (2) A medical resident or intern;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist, dental hygienist or dental assistant;
- (6) A chiropractor;
- (7) A podiatrist;
- (8) A registered or licensed practical nurse;
- (9) A certified nursing assistant;
- (10) A social worker;
- (11) A psychologist;
- (12) A pharmacist;
- (13) A physical therapist;
- (14) A speech therapist;
- (15) An occupational therapist;
- (16) A mental health professional;
- (17) A law enforcement official, corrections officer or other person holding a certification from the Maine Criminal Justice Academy;
- (18) Emergency room personnel;
- (19) An ambulance attendant;
- (20) An emergency medical technician or other licensed medical service provider;
- (21) Unlicensed assistive personnel;
- (22) A humane agent employed by the Department of Agriculture, Food and Rural Resources;
- (23) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;
- (24) A sexual assault counselor; ~~or~~
- (25) A family or domestic violence victim advocate;
- (26) A naturopathic doctor;
- (27) A respiratory therapist;
- (28) A court-appointed guardian or conservator; or
- (29) A chair of a professional licensing board that has jurisdiction over mandated reporters;

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the incapacitated or dependent adult,

regardless of whether the person receives compensation; ~~or~~

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation; or

D. Any person providing transportation services as a volunteer or employee of an agency, business or other entity, whether or not the services are provided for compensation.

The duty to report under this subsection applies to individuals who must report directly to the department. A supervisor or administrator of a person making a report under this section may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report. Internal procedures to facilitate, reporting consistent with this chapter and to ensure confidentiality of and apprise supervisors and administrators of reports may be established as long as those procedures are ~~not inconsistent~~ consistent with this chapter.

**Sec. 3. 22 MRSA §3477, sub-§6** is enacted to read:

**6. Photographs of visible trauma.** Whenever a person required to report as a staff member of a law enforcement agency or a hospital sees areas of trauma on an incapacitated or dependent adult, that person shall make reasonable efforts to take, or cause to be taken, color photographs of those areas of trauma.

A. The taking of photographs must be done with minimal trauma to the incapacitated or dependent adult and in a manner consistent with professional forensic standards. Consent to the taking of photographs is not required from the adult's legal guardian or by a health care power of attorney.

B. Photographs must be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for adult protective services.

C. The person shall notify the department as soon as possible if that person is unable to take, or cause to be taken, these photographs.

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to subsequent adult protection proceedings.

**Sec. 4. 22 MRSA §3477, sub-§7** is enacted to read:

7. Information about duty to report. Whenever possible, the department and state licensing boards of professionals required to report under this section shall collaborate to facilitate the dissemination of information regarding the duty to report and the reporting procedure.

**Sec. 5. 22 MRSA §3485,** as amended by PL 2003, c. 653, §18, is repealed and the following enacted in its place:

**§3485. Reporting abuse**

**1. Immediate report.** Subject to the confidentiality provisions of section 3474, subsection 2, paragraph A, when the department receives a report under subchapter 1-A that a person is suspected of abusing, neglecting or exploiting an incapacitated or dependent adult, the department shall immediately report the suspected abuse, neglect or exploitation to the appropriate district attorney's office, whether or not the department investigates the report.

**2. After investigation.** Upon finding evidence indicating that a person has abused, neglected or exploited an incapacitated or dependent adult, resulting in serious harm, the department shall notify the appropriate district attorney or law enforcement agency of that finding.

See title page for effective date.

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**CHAPTER 292**

**S.P. 437 - L.D. 1420**

**An Act To Modify the Laws Regarding Status as an Independent Contractor**

**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 meaning of "independent contractor" in unemployment law is confusing to employers and employees, who seek clarity and uniformity; and

**Whereas,** the issue of classification of workers transcends many decades of legislative discussion and needs to be addressed to encourage the spirit of entrepreneurship in the State; and

**Whereas,** it is in the best interests of the State, employees and employers to eliminate this confusion as soon as possible and, to that end, the stakeholder group authorized by this legislation needs to meet as soon as possible to formulate a test to determine independent contractor status; 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. 26 MRSA §1043, sub-§11, ¶E,** as amended by PL 1979, c. 651, §45, is further amended to read:

E. Services performed by an individual for remuneration ~~shall be deemed~~ are considered to be employment subject to this chapter unless ~~and until~~ it is shown to the satisfaction of the bureau that the individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of service and in fact, and:

(1) ~~Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact;~~

(2) Such service is either outside the usual course of the business for which such service is performed; or ~~that~~ such service is performed outside of all the places of business of the enterprise for which such service is performed; ~~and or~~

(3) ~~Such~~ That individual is customarily engaged in an independently established trade, occupation, profession or business.

This paragraph is repealed December 31, 2012.

**Sec. 2. Report.** The Commissioner of Labor or the commissioner's designee shall convene a stakeholder group with representatives from the Workers' Compensation Board and the Department of Administrative and Financial Services, Maine Revenue Services and shall invite the participation of representatives from the Maine Merchants Association, Maine State Chamber of Commerce, National Federation of Independent Business, Maine Employers' Mutual Insurance Company, American Federation of Labor - Congress of Industrial Organizations, Maine Women's Lobby, Maine Equal Justice Partners, Associated Builders and Contractors, Inc., Associated General Contractors of Maine, Technology Association of Maine and Maine Immigrant Rights Coalition. The stakeholder group shall develop an employment test to be used in the administration of, without limitation, unemployment compensation law, workers' compensation law and programs of the Department of Labor, Bureau of Labor Standards to determine whether a person is an employee or independent contractor. The commissioner or the commissioner's designee shall submit a report with recommendations to the Joint Standing Committee on Labor, Commerce, Research