

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.

Augusta, Maine
2011

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Sec. 5. 22 MRSA §3485, as amended by PL 2003, c. 653, §18, is repealed and the following enacted in its place: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

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

and Economic Development by January 15, 2012. The joint standing committee is authorized to introduce a bill related to the report to the Second Regular Session of the 125th Legislature.

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

Effective June 10, 2011.

CHAPTER 293

H.P. 887 - L.D. 1196

An Act To Clarify Assistance for Persons with Acquired Brain Injury

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

Sec. 1. 22 MRSA §3086, sub-§1, as repealed and replaced by PL 1989, c. 501, Pt. P, §26, is amended to read:

1. Acquired brain injury. "~~Head~~ Acquired brain injury" means an insult to the brain resulting directly or indirectly from trauma, anoxia, vascular lesions or infection, which:

- A. Is not of a degenerative or congenital nature;
- B. Can produce a diminished or altered state of consciousness resulting in impairment of cognitive abilities or physical functioning;
- C. Can result in the disturbance of behavioral or emotional functioning;
- D. Can be either temporary or permanent; and
- E. Can cause partial or total functional disability or psychosocial maladjustment.

Sec. 2. 22 MRSA §3087, as amended by PL 1991, c. 155, is repealed.

Sec. 3. 22 MRSA §3088, as enacted by PL 1987, c. 494, is repealed and the following enacted in its place:

§3088. Comprehensive neurorehabilitation service system

The department shall, within the limits of its available resources, develop a comprehensive neurorehabilitation service system designed to assist, educate and rehabilitate the person with an acquired brain injury to attain and sustain the highest function and self-sufficiency possible using home-based and community-based treatments, services and resources to the greatest possible degree. The comprehensive neurorehabilitation service system must include, but is not limited to, care management and coordination, crisis

stabilization services, physical therapy, occupational therapy, speech therapy, neuropsychology, neurocognitive retraining, positive neurobehavioral supports and teaching, social skills retraining, counseling, vocational rehabilitation and independent living skills and supports. The comprehensive neurorehabilitation service system may include a posthospital system of nursing, community residential facilities and community residential support programs designed to meet the needs of persons who have sustained an acquired brain injury and assist in the reintegration of those persons into their communities.

Sec. 4. 22 MRSA §3089, as enacted by PL 2005, c. 229, §1, is amended to read:

§3089. Acquired brain injury assessments and interventions; protection of rights

The department is designated as the official state agency responsible for acquired brain injury services and programs.

1. Assessments and interventions. In addition to developing the comprehensive neurorehabilitation service system under section 3088, the department may undertake, within the limits of available resources, appropriate identification and medical and rehabilitative interventions for persons who sustain acquired brain injuries, including, but not limited to, establishing services:

A. To assess the needs of persons who sustain acquired brain injuries and to facilitate effective and efficient medical care, neurorehabilitation planning and reintegration; and

B. To improve the knowledge and skills of the medical community, including, but not limited to, emergency room physicians, psychiatrists, neurologists, neurosurgeons, neuropsychologists and other professionals who diagnose, evaluate and treat acquired brain injuries.

2. Rights of patients and responsibility of department to protect those rights. To the extent possible within the limits of available resources and except to the extent that a patient with an acquired brain injury's rights have been suspended as the result of court-ordered guardianship, the department shall:

A. Protect the health and safety of that patient;

B. Ensure that the patient has access to treatment, individualized planning and services and positive behavioral interventions and protections; and

C. Protect the patient's rights to appeal decisions regarding the person's treatment, access to advocacy services and service quality control standards, monitoring and reporting.

3. Rules. The department shall establish rules under this section. Rules adopted pursuant to this sec-