

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST SPECIAL SESSION
September 27, 2011

SECOND REGULAR SESSION
January 4, 2012 to May 31, 2012

THE EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
LAWS IS
SEPTEMBER 28, 2011

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 30, 2012

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

Augusta, Maine
2012

Veterans Affairs. The report may include recommendations for legislation to assist in this veteran identification effort. The joint standing committee of the Legislature having jurisdiction over veterans matters is authorized to report out a bill to the First Regular Session of the 126th Legislature.

See title page for effective date.

CHAPTER 540

S.P. 550 - L.D. 1651

An Act To Clarify Health Insurance Benefits for Disabled Participants in the Maine Public Employees Retirement 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, changes made during the First Regular Session of the 125th Legislature to cost-sharing provisions for the health insurance plan covering retired state employees require individuals who retire after January 1, 2012 and before normal retirement age to pay 100% of the group health plan premium; and

Whereas, these changes have created unanticipated consequences affecting individuals receiving disability retirement benefits who are automatically transferred to regular retirement benefits when those regular retirement benefits equal or exceed the disability retirement benefits; and

Whereas, individuals who are transferred from disability status to regular retirement status prior to normal retirement age may be required to pay the full cost of the health insurance plan; and

Whereas, such costs would be a significant burden for disabled retirees; and

Whereas, this situation must be remedied immediately; 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. 5 MRSA §285, sub-§7, ¶L, as enacted by PL 2011, c. 380, Pt. V, §1 and affected by §7, is amended to read:

L. The provisions of paragraphs I and J do not apply to those individuals who are receiving or who have received retirement benefits under section 17907 or section 17929.

Sec. 2. 20-A MRSA §13451, sub-§3, as amended by PL 2011, c. 380, Pt. W, §3 and affected by §5, is further amended to read:

3. Payment by State. The State shall pay a percentage of the retired teacher members' share of this insurance according to the following schedule:

- A. Thirty percent until July 1, 2002;
- B. Thirty-five percent from July 1, 2002 to July 31, 2003;
- C. Forty percent from August 1, 2003 to December 31, 2005; and
- D. Forty-five percent after December 31, 2005.

Except for individuals who are receiving or who have received retirement benefits under Title 5, section 17907 or ~~17929~~ 17929, for a teacher who retires after July 1, 2012, the State shall begin paying the percentage of the retired teacher member's share pursuant to this subsection when the retiree reaches normal retirement age.

For the fiscal years ending June 30, 2012 and June 30, 2013, the State's total cost for retired teachers' health insurance premiums is capped at the fiscal year 2010-11 funding level.

Sec. 3. Retroactivity. This Act is retroactive to January 1, 2012.

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

Effective March 20, 2012.

CHAPTER 541

H.P. 1240 - L.D. 1688

An Act To Clarify the Status of Patients Held under Involuntary Commitment Applications

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

Sec. 1. 15 MRSA §393, sub-§4-A, as enacted by PL 2007, c. 670, §9 and affected by §24, is amended to read:

4-A. Application for relief. Except as otherwise provided, a person subject to the federal prohibition against possession of firearms pursuant to 18 United States Code, Section 922(g)(4) as a result of being

adjudicated a mental defective or committed to any psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B, section 3864 may, after the expiration of 5 years from the date of final discharge from commitment, apply to the commissioner for relief from the disability.

Relief is not available under this subsection for a person found not criminally responsible by reason of insanity or incompetent to stand trial in a criminal case or a person adjudged by a Probate Court to lack the capacity to contract or manage the person's own affairs.

A. An application under this subsection must be on a form developed by the commissioner. The application must include the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make and model of the firearm sought to be possessed; reason for the request; date, place and docket number of commitment; name of institution to which applicant was committed; names of providers that provided mental health treatment for the applicant; date of discharge from commitment; release for all mental health records; and any other information determined by the commissioner to be of assistance. The application must be accompanied by certified or attested copies of the commitment from which the applicant seeks relief and the report of an independent psychologist or psychiatrist licensed to practice in this State specifically addressing the factors set forth in paragraph E. The commissioner may establish a roster of psychologists and psychiatrists qualified and interested in doing these evaluations. The psychologist or psychiatrist must be available for cross-examination. The psychologist or psychiatrist listed on the roster is an employee for the purposes of the Maine Tort Claims Act for evaluations under this paragraph.

B. The commissioner has the independent authority to establish the following, to be paid by the applicant:

- (1) Application fee; and
- (2) Fees for evaluations required by paragraph A.

C. Upon receipt of a completed application, the commissioner shall notify persons who received notice of the commitment pursuant to Title 34-B, section 3864, subsection 3, paragraph A, subparagraph (2) and the district attorney, chief of police and sheriff in the municipality and county where the applicant resides of the filing of the application, with a request to provide to the commissioner any information relevant to the factors in paragraph E.

D. Upon receipt of a completed application, the commissioner shall review the application and determine whether the person has made a prima facie showing of the elements of paragraph E. If the commissioner determines that the person has made a prima facie showing, the commissioner shall schedule a hearing.

E. The burden of proof is on the applicant to prove, by clear and convincing evidence, that the circumstances that led to the involuntary commitment to a hospital have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest.

F. If the commissioner finds by clear and convincing evidence that the circumstances that led to the involuntary commitment have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest, the commissioner may grant relief.

G. Notwithstanding any other provision of law, and except as indicated in this paragraph, all applications for relief pursuant to this subsection and documents made a part of the application, refusals and any information of record collected by the commissioner during the process of determining whether an applicant qualifies for relief are confidential and may not be made available for public inspection or copying unless:

- (1) The applicant waives this confidentiality in writing or on the record of any hearing; or
- (2) A court of record so orders. Proceedings relating to the grant or denial of relief are not public proceedings under Title 1, chapter 13.

The commissioner shall make a permanent record, in the form of a summary, of the final decision regarding each application. The summary must include the name of the applicant and indicate whether the application for relief was granted or denied. The information contained in this summary is available for public inspection.

H. An applicant may appeal the denial of an application for relief under this subsection within 30 days of receipt of the written notice of decision by filing a complaint in the District Court for de novo review in the district where the Department of Public Safety has its principal office. Hearings are closed unless otherwise agreed to by the applicant. A party aggrieved by a decision of the District Court may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

Sec. 2. 34-B MRSA §3863, sub-§9 is enacted to read:

9. Limitation. Admission to a psychiatric hospital on an emergency basis under the provisions of this section is not commitment to a psychiatric hospital.

Sec. 3. 34-B MRSA §3873-A, sub-§7, ¶B, as enacted by PL 2009, c. 651, §29, is amended to read:

B. ~~Issue an order of emergency commitment~~ Endorse an application for admission to a psychiatric hospital under section 3863 conditioned on receiving a certificate from a medical practitioner that the patient has failed to comply with an essential requirement of the treatment plan; and

See title page for effective date.

CHAPTER 542

S.P. 640 - L.D. 1845

An Act To Implement the Recommendations of the Department of Health and Human Services and the Maine Developmental Disabilities Council Regarding Respectful Language

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, treating a person with intellectual disabilities with respect, including in the language that is used in referring to the person, to the system of delivering services and to the services, offices and personnel of the Department of Health and Human Services, is important to the dignity of the person and should be accomplished at the earliest possible time; 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:

PART A

Sec. A-1. 4 MRSA §152, sub-§4, as corrected by RR 2001, c. 2, Pt. A, §2, is amended to read:

4. Exclusive jurisdiction. Original jurisdiction, not concurrent with that of the Superior Court, of men-

tal health commitment hearings under Title 34-B, chapter 3, subchapter 4, ~~mental retardation intellectual disability~~ certification hearings under Title 34-B, chapter 5, habitual truancy actions under Title 20-A, chapters 119 and 211 under which equitable relief may be granted and small claims actions under Title 14, chapter 738;

Sec. A-2. 5 MRSA §1642, sub-§6, as enacted by PL 1985, c. 96, is amended to read:

6. Social service. "Social service" means any children's, youth, adult or elderly service and alcoholism, community action, developmental disability, drug or substance abuse, home-heating assistance, juvenile, mental health, ~~mental retardation intellectual disability~~, older Americans, poverty, rehabilitation, transportation, weatherization or other social service that may be defined in the future and that is operated by the departments or the division utilizing state-administered funds, including related health and medical services and income supplementation programs.

Sec. A-3. 5 MRSA §4553-A, sub-§1, ¶B, as enacted by PL 2007, c. 385, §3, is amended to read:

B. Without regard to severity unless otherwise indicated: absent, artificial or replacement limbs, hands, feet or vital organs; alcoholism; amyotrophic lateral sclerosis; bipolar disorder; blindness or abnormal vision loss; cancer; cerebral palsy; chronic obstructive pulmonary disease; Crohn's disease; cystic fibrosis; deafness or abnormal hearing loss; diabetes; substantial disfigurement; epilepsy; heart disease; HIV or AIDS; kidney or renal diseases; lupus; major depressive disorder; mastectomy; ~~mental retardation intellectual disability~~; multiple sclerosis; muscular dystrophy; paralysis; Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis; schizophrenia; and acquired brain injury;

Sec. A-4. 5 MRSA §12004-I, sub-§66, as amended by PL 2003, c. 417, §1 and affected by §4, is further amended to read:

66.

Mental Health and Mental Retardation Intellectual Disability	Maine Developmental Disabilities Council	Expenses Only	34-B MRSA §17001
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Sec. A-5. 5 MRSA §12004-J, sub-§15, as enacted by PL 2007, c. 356, §3 and affected by c. 695, Pt. D, §3, is amended to read: