

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2016 to April 29, 2016

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 29, 2016

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

Augusta, Maine
2016

law, any bonds issued pursuant to this subsection are fully negotiable. If any member of the authority whose signature appears on the bond or coupons ceases to be a member of the authority before the delivery of those bonds, that signature is valid and sufficient for all purposes as if that member of the authority had remained a member of the authority until delivery.

8. Requirements of recipient. A recipient of financial support under subsection 6 shall provide the following.

A. In addition to repayment of the financial support received under subsection 6 pursuant to the terms set by the authority, within 5 years after the completion of the business development project the recipient shall pay to the fund an amount equal to 10% of the amount of the financial support received under subsection 6 pursuant to terms determined by the authority.

B. The recipient shall report to the authority 5 years after completion of the business development project. The report must include a description of the business development project and the number of jobs created or retained. The report must identify the entity or entities using the business development project and, for each entity, indicate the extent to which the entity is owned or managed by minorities or women, the percentage of the entity's operations located within and outside the State, the entity's payroll and the property taxes paid by the entity.

9. Report. The authority shall report annually, on or before January 1st, to the joint standing committee of the Legislature having jurisdiction over economic development matters. The report must include a description of each business development project under the program, the amount, type and terms of financial support the business development project received and the information reported to the authority pursuant to subsection 8. The report must contain an accounting of the fund, bonds issued pursuant to subsection 7 and any loans or bonds that are in default. The accounting must include, at a minimum, identification of amounts received from each public or private source, identification of amounts returned to each public or private source and an accounting of the authority's implementation and administration expenses incurred and charged to the fund.

The committee may request that the joint legislative committee established to oversee program evaluation and government accountability matters direct the Office of Program Evaluation and Government Accountability to review the program as provided in Title 3, section 991.

10. Rules. The authority may adopt rules as necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

ant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Contingent effective date. This Act takes effect only upon the receipt by the Finance Authority of Maine for the Maine Capital Investment Fund under the Maine Revised Statutes, Title 10, section 1026-U of an appropriation or allocation by the Legislature or funds from another funding source in the amount of at least \$50,000,000. The Finance Authority of Maine shall notify the Secretary of State, the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes when the funds are received pursuant to this section.

See title page for effective date, unless otherwise indicated.

CHAPTER 416

H.P. 1083 - L.D. 1593

An Act To Make Hunting, Fishing and Trapping the Basis of Managing Inland Fisheries and Wildlife Resources

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

Sec. 1. 12 MRSA §10051, first ¶, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, is amended to read:

The Department of Inland Fisheries and Wildlife is established to preserve, protect and enhance the inland fisheries and wildlife resources of the State; to encourage the wise use of these resources; to ensure coordinated planning for the future use and preservation of these resources; and to provide for effective management of these resources; and to use regulated hunting, fishing and trapping as the basis for the management of these resources whenever feasible.

See title page for effective date.

CHAPTER 417

S.P. 515 - L.D. 1389

An Act To Conform Maine Law to Federal Law Regarding Closings and Mass Layoffs and To Strengthen Employee Severance Pay Protections

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

Sec. 1. 26 MRSA §625-B, as amended by PL 2009, c. 305, §§1 to 4 and affected by §5, is further amended to read:

§625-B. Severance pay due to closing, substantial shutdown or relocation of a covered establishment

1. Definitions. As used in this section, unless the context otherwise indicates, the following words ~~shall~~ have the following meanings.

A. "Covered establishment" means any industrial or commercial facility or part thereof ~~which that~~ employs or has employed at any time in the preceding 12-month period 100 or more persons.

A-1. "Closing" means the permanent shutdown of industrial or commercial operations at a covered establishment. A closing may occur due to relocation, termination or consolidation of the employer's business.

B. "Director" means the Director of the Bureau of Labor Standards.

B-1. "Eligible employee" means any employee who:

(1) Has been continuously employed at the covered establishment at the time of the closing or mass layoff for at least 3 years, including any period when the employee was on a leave of absence;

(2) Has not been terminated for cause; and

(3) Has not accepted employment at another or relocated establishment operated by the employer or remains employed at the covered establishment.

"Eligible employee" includes an employee who has voluntarily quit employment at a covered establishment to take a new job within a 30-day period prior to the date set by the employer for a closing or mass layoff in an initial notice provided by the employer under state or federal law.

C. "Employer" means any person who directly or indirectly owns and operates a covered establishment. For purposes of this definition, a parent corporation is considered the indirect owner and operator of any covered establishment that is directly owned and operated by its corporate subsidiary.

C-1. "Gross earnings" includes all pay for regular hours, shift differentials, premiums, overtime, floating holidays, holidays, funeral leave, jury duty pay, sick pay and vacation pay earned within the last 12 months prior to the closing or mass layoff. "Gross earnings" does not include payments made under a 3rd-party benefit program, such as disability payments.

C-2. "Mass layoff" means a reduction in workforce, not the result of a closing, that results in an employment loss at a covered establishment for at least 6 months of at least:

(1) Thirty-three percent of the employees and at least 50 employees; or

(2) Five hundred employees.

D. "Person" means any individual, group of individuals, partnership, corporation, association or any other entity.

E. "Physical calamity" means any calamity such as fire, flood or other natural disaster.

F. "Relocation" means the removal of all or substantially all of industrial or commercial operations in a covered establishment to a new location, within or without the State of Maine, 100 or more miles distant from its original location.

~~G. "Termination" means the substantial cessation of industrial or commercial operations in a covered establishment.~~

H. "Week's pay" means an amount equal to the employee's gross earnings during the 12 months previous to the date of ~~termination or relocation closing or mass layoff~~ as established by the director ~~or the date of the termination or layoff of the employee, should it occur earlier~~, divided by the number of weeks in which the employee ~~worked~~ received gross earnings during that 12-month period.

2. Severance pay. Any employer who ~~relocates or terminates~~ closes or engages in a mass layoff at a covered establishment ~~shall be is~~ is liable to ~~his~~ eligible employees of the covered establishment for severance pay at the rate of one week's pay for each year, and partial pay for any partial year, from the last full month of employment by the employee in that establishment. The severance pay to eligible employees ~~shall be is~~ in addition to any final wage payment to the employee and ~~shall~~ must be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.

3. Mitigation of severance pay liability. There is no liability under this section for severance pay to an eligible employee if:

A. ~~Relocation or termination~~ Closing of or a mass layoff at a covered establishment is necessitated by a physical calamity or the final order of a federal, state or local government agency;

B. The employee is covered by, and has actually been paid under the terms of, an express contract providing for severance pay that is ~~equal to or in~~ an amount that is greater than the severance pay required by this section. An employer must demonstrate, to the satisfaction of the director, that the

severance pay provided under the terms of an express contract provides a greater benefit to the employee than provided in this section; or

C. That employee accepts employment at the new location;

D. That The employee has been employed by the employer for less than 3 years; or,

E. A covered establishment files for protection under 11 United States Code, Chapter 11 unless the filing is later converted to a filing under 11 United States Code, Chapter 7.

3-A. Bankruptcy proceedings. A covered establishment is not exempt from liability for severance pay under this section solely because it files a voluntary petition for bankruptcy protection under the provisions of Chapter 7 or Chapter 11 of the United States Bankruptcy Code, 11 United States Code, Section 101, et seq., or because an involuntary petition is commenced against it pursuant to 11 United States Code, Section 303.

4. Suits by, or on behalf of, employees. Any employer who violates the provisions of this section ~~shall be~~ is liable to the employee or employees affected in the amount of their unpaid severance pay. Action to recover the liability may be maintained against any employer in any state or federal court of competent jurisdiction by any one or more employees for and on behalf of ~~himself that employee or themselves those employees~~ and any other employees similarly situated. Any labor organization may also maintain an action on behalf of its members. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant and costs of the action.

5. Suits by the director. The director is authorized to supervise the payment of the unpaid severance pay owing to any employee under this section. The director may bring an action in any court of competent jurisdiction to recover the amount of any unpaid severance pay. The right provided by subsection 4 to bring an action by or on behalf of any employee, and of any employee to become a party plaintiff to any ~~such pending action brought and maintained under subsection 4, shall terminate~~ terminates upon the filing of a complaint by the director in an action under this subsection, unless the action is dismissed without prejudice by the director. Any sums recovered by the director on behalf of an employee pursuant to this subsection ~~shall must~~ be held in a special deposit account and ~~shall must~~ be paid, on order of the director, directly to the employee affected. Any sums thus recovered not paid to an employee because of inability to do so within a period of 3 years ~~shall must~~ be paid over to the State of Maine.

6. Notice of director. Any person proposing to relocate or ~~terminate~~ close a covered establishment shall notify the director in writing not less than 60 days prior to the relocation or closing. A person initiating a mass layoff at a covered establishment shall notify the director as far in advance as practicable, and no later than within 7 days of the layoff, and shall report to the director the expected duration of the layoff and whether it is of indefinite or definite duration. The director shall, from time to time, but no less frequently than every 30 days, require the employer to report such facts as the director considers relevant to determine whether the mass layoff constitutes a closing under this section or whether there is a substantial reason to believe the affected employees will be recalled. A notification or report provided to the director pursuant to this subsection must contain all relevant information in the possession of the employer regarding a potential recall, if applicable.

6-A. Notice to employees and municipality. A person proposing to ~~terminate or to relocate~~ close a covered establishment ~~outside the State~~ shall notify employees and the municipal officers of the municipality where the ~~plant~~ covered establishment is located in writing not less than 60 days prior to the ~~termination or relocation~~ closing, unless this notice requirement is waived by the director. A person that violates this provision commits a civil violation for which a fine of not more than \$500 may be adjudged, except that a fine may not be adjudged if the ~~relocation closing~~ is necessitated by a physical calamity or the final order of a federal, state or local government agency, or if the failure to give notice is due to unforeseen circumstances. A fine imposed pursuant to this subsection may not be collected by the Department of Labor to the extent such collection prevents the violator from making all payments required under subsection 2.

7. Powers of director. In any investigation or proceeding under this section, the director ~~shall have~~ has, in addition to all other powers granted by law, the authority to examine books and records of any employer affected by this section as set out in section 665, subsection 1.

8. Rules. The Department of Labor shall adopt rules to implement this section. Rules adopted pursuant to this subsection are ~~major substantive routine~~ technical rules as defined in Title 5, chapter 375, subchapter ~~II-A 2-A~~. ~~Initial rules must be provisionally adopted and submitted to the Legislature not later than January 15, 2003.~~

9. Penalties. A person that violates subsection 2 commits a civil violation for which a fine of not more than \$1,000 per violation may be adjudged. Each employee affected constitutes a separate violation. Any such fine may not be collected by the Department of Labor to the extent such collection prevents the viola-

tor from making all payments required under subsection 2.

10. Mass layoff. Whenever an employer lays off 100 or more employees at a covered establishment, the employer within 7 days of such a layoff shall report to the director the expected duration of the layoff and whether it is of indefinite or definite duration. The director shall, from time to time, but no less frequently than every 30 days, require the employer to report such facts as the director considers relevant to a determination as to whether the layoff constitutes a termination or relocation under this section or whether there is a substantial reason to believe the affected employees will be recalled within a reasonable time.

See title page for effective date.

CHAPTER 418

H.P. 138 - L.D. 180

An Act To Allow Terminally Ill Patients To Choose To Use Experimental Treatments

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

Sec. 1. 22 MRSA c. 602-A is enacted to read:

CHAPTER 602-A

ACCESS TO INVESTIGATIONAL TREATMENTS FOR TERMINALLY ILL PATIENTS

§2671. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Eligible patient. "Eligible patient" means a person who has:

A. Received a diagnosis of a terminal illness for which no standard treatment is effective and the diagnosis has been attested by the person's treating physician;

B. Considered all treatment options approved by the United States Food and Drug Administration;

C. Not been accepted into a clinical trial within one week of completion of the clinical trial application process;

D. Received a recommendation from the person's treating physician for an investigational drug, biological product or device;

E. Given written, informed consent for the use of the investigational drug, biological product or device under paragraph D or, if the person is a minor

or lacks the mental capacity to provide informed consent, whose parent or legal guardian has given written, informed consent on the person's behalf; and

F. Received documentation from the person's treating physician that the person meets all of the conditions in this subsection.

2. Investigational drug, biological product or device. "Investigational drug, biological product or device" means a drug, biological product or device that has successfully completed Phase I of a United States Food and Drug Administration-approved clinical trial but has not yet been approved for general use by the United States Food and Drug Administration and remains under investigation in such a clinical trial.

3. Terminal illness. "Terminal illness" means a disease or condition that, without life-sustaining measures, will soon result in death or in a state of permanent unconsciousness from which recovery is unlikely.

4. Treating physician. "Treating physician" means a physician who has primary responsibility for the care of a patient and treatment of that patient's terminal illness.

5. Written, informed consent. "Written, informed consent" means a written document signed by a patient or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian of the patient. The document must be attested by the patient's treating physician and a witness and include the following information:

A. An explanation of the United States Food and Drug Administration-approved treatments for the disease or condition from which the patient suffers;

B. A statement that the patient concurs with the patient's treating physician that all United States Food and Drug Administration-approved and standard treatments for the disease or condition from which the patient suffers are unlikely to prolong the patient's life;

C. Clear identification of the specific investigational drug, biological product or device that the patient is seeking to use; and

D. A description of the best and worst potential outcomes of using the investigational drug, biological product or device identified under paragraph C with a description of the most likely outcome. The description must include the possibility that new, unanticipated, different or worse symptoms might result and that death could be hastened by the proposed treatment. The description must be based on the treating physician's knowledge of the proposed treatment in conjunc-