CHAPTER 9

ATTORNEY GENERAL

§191. Duties; salary; fees; full time

1. Attorney General; office; salary. The Attorney General is the executive head of the Department of the Attorney General. The Attorney General shall keep an office at the seat of government and is entitled to receive an annual salary in full for all services. The Attorney General is entitled to receive actual expenses incurred in the performance of official duties.
[PL 2003, c. 510, Pt. B, §2 (NEW); PL 2003, c. 599, §11 (AFF).]

2. Full time; prohibited activities. The Attorney General shall devote full time to the duties of the office and may not engage in the private practice of law during the Attorney General's term of office, nor may the Attorney General during that term be a partner or associate of any person in the practice of law. During the term of service, the Attorney General may not be an officer or director of any corporation engaged in business for profit within the State.
[PL 2003, c. 510, Pt. B, §2 (NEW); PL 2003, c. 599, §11 (AFF).]

3. Representation by Attorney General, deputies, assistants and staff attorneys. The Attorney General or a deputy, assistant or staff attorney shall appear for the State, the head of any state department, the head of any state institution and agencies of the State in all civil actions and proceedings in which the State is a party or interested, or in which the official acts and doings of the officers are called into question, in all the courts of the State and in those actions and proceedings before any other tribunal when requested by the Governor or by the Legislature or either House of the Legislature. All such actions and proceedings must be prosecuted or defended by the Attorney General or under the Attorney General's direction.

A. Writs, summonses or other processes served upon those officers must be transmitted by them to the Attorney General. [PL 2003, c. 510, Pt. B, §2 (NEW); PL 2003, c. 599, §11 (AFF).]

B. All legal services required by those officers, boards and commissions in matters relating to their official duties must be rendered by the Attorney General or under the Attorney General's direction. The officers or agencies of the State may not act at the expense of the State as counsel, nor employ private counsel except upon prior written approval of the Attorney General. In all instances where the Legislature has authorized an office or an agency of the State to employ private counsel, the Attorney General's written approval is required as a condition precedent to the employment. [PL 2003, c. 510, Pt. B, §2 (NEW); PL 2003, c. 599, §11 (AFF).]

[PL 2003, c. 510, Pt. B, §2 (NEW); PL 2003, c. 599, §11 (AFF).]

4. Fees. The Attorney General is entitled to receive the following fees:

A. [PL 2003, c. 599, §1 (RP); PL 2003, c. 599, §2 (AFF).]

B. For certificate that any corporation has ceased to transact business and is excused from filing annual returns, as authorized in Title 13-C, section 1621, subsection 4, $5. [PL 2003, c. 510, Pt. B, §2 (NEW); PL 2003, c. 599, §11 (AFF).]

The Attorney General shall collect the legal and usual fees payable to the Attorney General by virtue of the Attorney General's office and shall pay them over to the Treasurer of State.
[PL 2003, c. 599, §1 (AMD); PL 2003, c. 599, §§2, 11 (AFF).]

SECTION HISTORY

PL 1965, c. 141 (AMD). PL 1965, c. 510, §1 (AMD). PL 1965, c. 513, §§5-B (AMD). PL 1967, c. 476, §9 (AMD). PL 1969, c. 504, §6 (AMD). PL 1971, c. 439, §7 (AMD). PL 1971, c. 550,

§2 (AMD). PL 1973, c. 585, §§11,12,14 (AMD). PL 1973, c. 711, §§1-2 (AMD). PL 1975, c. 770, §20 (AMD). PL 1977, c. 696, §34 (AMD). PL 1989, c. 410, §13 (AMD). PL 2003, c. 510, §B2 (RPR). PL 2003, c. 510, §B3 (AFF). PL 2003, c. 599, §1 (AMD). PL 2003, c. 599, §§2,11 (AFF).

§191-A. Transition period

In order to provide for an orderly transition following the biennial election of the Attorney General, the Attorney General-elect shall not take the oath of his office or otherwise qualify for the office for a period of no less than 30 days following that election. [PL 1981, c. 143 (NEW).]

SECTION HISTORY

PL 1981, c. 143 (NEW).

§191-B. Qualification

To serve as Attorney General, a person must be a member in good standing of the bar of the State. For purposes of this section, a person is a "member in good standing of the bar of the State" if that person is admitted to the practice of law in this State, is presently registered with the Board of Overseers of the Bar as an active practitioner and has not been and is not currently disbarred or suspended from practice pursuant to Title 4, chapter 17, subchapter II or Maine Bar Rule 7.2 or its successor. [PL 1997, c. 145, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 145, §1 (NEW).

§192. Prosecution of all claims for State

All civil actions to recover money for the State shall be brought by the Attorney General or by the district attorney in the name of the State. The Attorney General shall appear before the departments and tribunals of the United States and the committees of Congress to prosecute all claims of the State against the United States. [PL 1973, c. 567, §20 (AMD).]

SECTION HISTORY

PL 1973, c. 567, §20 (AMD).

§193. Prosecution of intruders

The Attorney General may, if in his judgment the public interest so requires, prosecute by indictment or complaint any person who intrudes on the land, rights or property of the State, or commits or erects a nuisance thereon.

§194. Public charities

1. Definition. As used in this section and sections 194-A to 194-H and section 194-K, "public charity" means an entity formed primarily for charitable purposes, including but not limited to:

A. A corporation formed under Title 13 or Title 13-B primarily for charitable purposes; and [PL 2001, c. 550, Pt. A, §1 (NEW).]

B. A charitable trust. [PL 2001, c. 550, Pt. A, §1 (NEW).]
[PL 2003, c. 171, §1 (AMD).]

2. Application; funds. The Attorney General shall enforce due application of funds given or appropriated to public charities within the State and prevent breaches of trust in the administration of public charities.
[PL 2001, c. 550, Pt. A, §1 (NEW).]

3. Gift. A gift to a public charity made for a public charitable purpose is deemed to have been made with a general intention to devote the property to public charitable purposes, unless otherwise provided in writing in the gift instrument.
[PL 2001, c. 550, Pt. A, §1 (NEW).]

4. Party to proceedings. The Attorney General must be made a party to all judicial proceedings in which the Attorney General is interested in the performance of the Attorney General's duties under subsection 2.
[PL 2001, c. 550, Pt. A, §1 (NEW).]

5. Investigation. The Attorney General may conduct an investigation using the methods set forth in subsections 6 and 7 if:

A. The Attorney General reasonably believes that a public charity has engaged or is about to engage in one of the following acts or practices:

(1) Consummation of a conversion transaction as defined in section 194-B without compliance with the applicable provisions of sections 194-C through 194-H; or

(2) The application of funds or assets of a public charity:

(a) In violation of statute;

(b) For noncharitable purposes unrelated to the operations of the public charity; or

(c) For private inurement or excess benefits provided to directors, officers, disqualified persons or others deemed insiders under applicable federal law for tax-exempt organizations; and [RR 2001, c. 2, Pt. A, §5 (COR).]

B. The Attorney General has applied to a Justice of the Superior Court for approval to conduct the investigation and the justice has granted that approval. The application for approval may be filed ex parte, and the justice shall approve the application if the justice finds that the conditions set forth in paragraph A have been met. [PL 2001, c. 550, Pt. A, §1 (NEW).]
[RR 2001, c. 2, Pt. A, §5 (COR).]

6. Scope and powers related to investigation. The authority of the Attorney General to conduct an investigation under this section is limited to investigation of the acts or practices described in subsection 5, paragraph A. In conducting the investigation, the Attorney General has authority to:

A. Take testimony under oath; [PL 2001, c. 550, Pt. A, §1 (NEW).]

B. Examine or cause to be examined any documentary material of whatever nature relevant to such acts or practices; and [PL 2001, c. 550, Pt. A, §1 (NEW).]

C. Require attendance during examination of documentary material under paragraph B of any person having knowledge of the documentary material and take testimony under oath or acknowledgement in respect to that documentary material. [PL 2001, c. 550, Pt. A, §1 (NEW).]
[PL 2001, c. 550, Pt. A, §1 (NEW).]

7. Taking testimony; examining documents. The taking of testimony and examination under subsection 6 must take place in the county where the testifying person resides or has a place of business or, if the parties consent or the testifying person is a nonresident or has no place of business within the State, in Kennebec County.

A. Notice of the time, place and cause of the taking of testimony, examination or attendance under this subsection must be given by the Attorney General at least 30 days prior to the date of the taking of testimony or examination, except that, upon application and good cause shown, a Justice of the Superior Court may order a shorter period of notice, but not less than 10 days. [PL 2001, c. 550, Pt. A, §1 (NEW).]

B. Service of a notice under paragraph A may be made by:

(1) Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or

(3) Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business. [PL 2001, c. 550, Pt. A, §1 (NEW).]

C. Each notice under this subsection must:

(1) State the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person;

(2) State the general subject matter of the investigation, the alleged violation that is under investigation and the title and section of statute, if any, governing the alleged violation;

(3) Describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the material demanded;

(4) Prescribe a return date by which the documentary material must be produced; and

(5) Identify the members of the Attorney General's staff to whom the documentary material must be made available for inspection and copying. [PL 2001, c. 550, Pt. A, §1 (NEW).]

D. A notice to produce documentary information or to give testimony under this subsection may not contain a requirement that would be unreasonable if contained in a subpoena duces tecum issued by a court of the State and may not require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum issued by a court of the State. [PL 2001, c. 550, Pt. A, §1 (NEW).]

E. Any documentary material or other information produced by a person pursuant to this subsection and subsection 6 may not, unless otherwise ordered by a court of the State for good cause shown, be disclosed to a person other than an authorized agent or representative of the Attorney General unless with the consent of the person producing the documentary material. [RR 2001, c. 2, Pt. A, §6 (COR).]

F. The Superior Court for Kennebec County or a Superior Court in any other county in which a person who is served notice pursuant to this section resides or has that person's usual place of business may issue orders concerning compliance with the notice, modification or quashing of the notice and contempt in the same manner as if the notice were a subpoena governed by Rule 45 of the Maine Rules of Civil Procedure. The recipient of a notice under this section has the protections accorded by Rule 45 to a person who is subject to a subpoena. [PL 2001, c. 550, Pt. A, §1 (NEW).]

[RR 2001, c. 2, Pt. A, §6 (COR).]

8. Authority regarding conversion proceedings. If a public charity files notice of a conversion transaction under section 194-D or applies for approval of such a transaction under section 194-E or 194-F, the authority of the Attorney General with regard to the notice or approval and the proceedings for approval are governed by sections 194-B to 194-K and the provisions of this section do not apply. [PL 2001, c. 550, Pt. A, §1 (NEW).]

9. Notice to the Superintendent of Insurance. If the Attorney General intends to conduct an investigation of a public charity that is subject to regulation by the Superintendent of Insurance, the

Attorney General shall notify the superintendent that an investigation is being initiated. The Attorney General shall also notify the superintendent of the resolution of any such investigation.
[PL 2001, c. 550, Pt. A, §1 (NEW).]

SECTION HISTORY

RR 2001, c. 2, §§A5,6 (COR). PL 2001, c. 550, §A1 (RPR). PL 2003, c. 171, §1 (AMD).

§194-A. Nonprofit hospital and medical service organizations

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

A. "Affiliate" means a person who directly or indirectly controls or is controlled by or is under common control with the person specified. [PL 1997, c. 344, §1 (NEW).]

B. "Charitable authority" means the Attorney General's authority over charities under section 194, under the Attorney General's corresponding common law authority and under the Maine Nonprofit Corporation Act, Title 13-B. [PL 1997, c. 344, §1 (NEW).]

C. "Charitable trust" means the entity described in subsection 5, paragraph B, subparagraph (1). [PL 1997, c. 344, §1 (NEW).]

D. "Contract holder" means the employer, labor union, association, trustee, creditor or other entity to which a group contract evidencing coverage is issued. [PL 1997, c. 344, §1 (NEW).]

E. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise unless the power is solely the result of an official position with or a corporate office held by the person. [PL 1997, c. 344, §1 (NEW).]

F. "Conversion" means the process by which a nonprofit hospital and medical service organization, with the approval of the superintendent pursuant to Title 24, section 2301, subsection 9-D, converts to a domestic stock insurer. [PL 1997, c. 344, §1 (NEW).]

G. "Fair market value" means the value of an organization or an affiliate or of the assets of such an entity determined, consistent with Title 24, section 2301, subsection 9-D, as if the entity had voting stock outstanding and 100% of its stock were freely transferrable and available for purchase without restrictions. In determining fair market value, consideration must be given to value as a going concern, market value, investment or earnings value, net asset value and a control premium, if any. If a charitable trust receives, at the time of conversion, 100% of the shares of the then-outstanding stock of the converted domestic stock insurer, the charitable trust is regarded as having acquired the fair market value of the organization unless the superintendent finds that such outstanding stock does not represent the fair market value of the organization. [PL 1997, c. 344, §1 (NEW).]

H. "Health insurance affiliate" means any domestic for-profit stock insurer required to be authorized under Title 24-A, section 404 to provide health insurance or any domestic for-profit health maintenance organization required to be licensed under Title 24-A, chapter 56 that is formed, acquired, invested in or otherwise established, whether directly or indirectly, by a nonprofit hospital and medical service organization. [PL 1997, c. 344, §1 (NEW).]

I. "Materially changes its form" or "material change in form" means any transaction that the superintendent or Attorney General determines has transferred control of the organization to a person other than a public charity as defined in section 194, substantially changed the organization's legal or regulatory status or substantially changed the organization's purposes, including, but not limited to, conversion, dissolution, merger, division, consolidation, amalgamation, disposition of

substantially all of an organization's business, line of business or assets, lease, exchange, restructuring or bulk reinsurance transfer. [PL 2003, c. 171, §2 (AMD).]

J. "Member" means a member of the nonprofit hospital and medical service organization entitled to vote under the articles or bylaws of the organization. [PL 1997, c. 344, §1 (NEW).]

K. "Nonprofit hospital and medical service organization" or "organization" means a corporation or other entity authorized by the superintendent or organized pursuant to Title 24 for the purpose of providing nonprofit hospital service plans within the meaning of Title 24, section 2301, subsection 1, nonprofit medical service plans within the meaning of Title 24, section 2301, subsection 2 and any organization that provides only nonprofit health care plans within the meaning of Title 24, section 2301, subsection 3. [PL 2001, c. 550, Pt. B, §1 (AMD).]

L. "Subscriber" means an individual who has subscribed to one or more of the hospital, medical or health care service plans or contracts offered by the organization or health insurance affiliate as defined in Title 24, section 2308-A through an individual or family policy or group policy. [PL 1997, c. 344, §1 (NEW).]

M. "Superintendent" means the Superintendent of Insurance. [PL 1997, c. 344, §1 (NEW).]
[PL 2003, c. 171, §2 (AMD).]

2. Charitable status of organization. Any nonprofit hospital and medical service organization is a charitable and benevolent institution and a public charity and its assets are held for the purpose of fulfilling the charitable purposes of the organization. The charitable purposes may include, but are not limited to, the following: providing access to medical care through affordable health insurance and affordable managed care products for persons of all incomes; identifying and addressing the State's unmet health care needs, particularly with regard to medically uninsured and underserved populations; making services and care available through participating providers; and improving the quality of care for medically uninsured and underserved populations.

A. If the organization materially changes its form and the ownership of an organization is at issue or is relevant in any proceeding in court or before the superintendent, then 100% of the fair market value of the organization as of the date of the material change in form must be owned by the charitable trust upon the approval or approval with modifications of the charitable trust plan or modified charitable trust plan by the court pursuant to subsection 5 or 6 and must be dedicated to the fulfillment of the charitable trust. [PL 2003, c. 171, §3 (AMD).]

B. [PL 2003, c. 171, §3 (RP).]

C. [PL 2003, c. 171, §3 (RP).]
[PL 2003, c. 171, §3 (AMD).]

3. Determination of ownership interest and charitable purposes by the Superior Court.

[PL 2003, c. 171, §4 (RP).]

4. Representation of charitable interests. Except as provided in this subsection, the Attorney General is the sole person authorized to represent the charitable interests of beneficiaries of the charitable obligations of a nonprofit hospital and medical service organization and any health insurance affiliate in any proceeding before any court or any administrative agency. The Attorney General may enforce the organization's charitable obligations in an action in Superior Court under the Attorney General's charitable authority. Nothing in this subsection may be construed to limit the superintendent's authority with respect to the interests of subscribers or the public in enforcing the provisions of Title 24 and Title 24-A.

A. The board of directors of a nonprofit hospital and medical service organization has the responsibility to fulfill the organization's charitable obligation, subject only to the Attorney General's authority to represent the charitable interests of beneficiaries of the organization's

charitable obligation, any applicable law and the superintendent's authority to enforce Title 24 and Title 24-A. [PL 1997, c. 344, §1 (NEW).]

B. A nonprofit hospital and medical service organization shall reimburse the Attorney General and the superintendent for the costs of any experts or consultants retained by the Attorney General or the superintendent in connection with any matter before any court or any administrative agency relating to the organization's charitable value and charitable obligations. [PL 1997, c. 344, §1 (NEW).]

[PL 1997, c. 344, §1 (NEW).]

5. Charitable trust plan required prior to conversion. A nonprofit hospital and medical service organization shall submit a charitable trust plan to the Attorney General at the same time that it submits a conversion plan to the superintendent for approval of a conversion to a domestic stock insurer pursuant to Title 24, section 2301, subsection 9-D.

A. Within 60 days of the organization's submission of the charitable trust plan to the Attorney General, the Attorney General shall file an action under the Attorney General's charitable authority in Superior Court seeking approval, approval with modifications, or disapproval of the charitable trust plan or of any amended charitable trust plan submitted to the Attorney General by the organization with the consent of the Attorney General. [PL 1997, c. 344, §1 (NEW).]

B. An organization may not convert to a domestic stock insurer under Title 24, section 2301, subsection 9-D until the Superior Court has approved or approved with modifications the organization's charitable trust plan. The court may not approve or approve with modifications the charitable trust plan unless it finds that the charitable trust plan meets the following requirements.

(1) The plan must describe the charitable trust or trusts that will receive the ownership interest in the organization following its conversion to a domestic stock insurer. For purposes of this section, a charitable trust:

(a) Must be a new or existing trust or public benefit corporation formed under the laws of this State, but may not include the organization or any person controlled by the organization;

(b) Must be a charitable entity that qualifies for federal income tax exemption under the United States Internal Revenue Code of 1986, as amended, Section 501 (c)(3) or (c)(4);

(c) May not be controlled by the converted domestic stock insurer;

(d) May not have more than one of its directors serve as a director of the domestic stock insurer;

(e) May not have as a director any person who has been a director or officer of the organization, the domestic stock insurer or any affiliate of either during the 3-year period preceding the date of appointment as a director of the charitable trust; and

(f) Must have a board of directors representing the people of the State including, but not limited to, persons representing the interests of the medically uninsured and underserved populations.

(2) The charitable mission of the charitable trust must include, but is not limited to, serving the State's unmet health care needs for the type of care historically covered by the organization, particularly with regard to medically uninsured and underserved populations and providing access to care and improving quality of care for those populations.

(3) The charitable trust plan must provide for the fair and equitable use by the charitable trust of its ownership interest in the organization to fulfill the charitable mission of the charitable trust.

(4) The charitable trust plan must require the charitable trust to report annually to the Attorney General as to its charitable activities and grant making relating to the use of its ownership interest in the organization and to make that annual report available to the public at both the Department of the Attorney General and the office of the charitable trust.

(5) The charitable trust plan must require the charitable trust, at all times when the charitable trust owns stock in any converted stock insurer and for 5 calendar years after any such ownership, to provide audited financial statements on a calendar-year basis and other reports, as may be required, to the superintendent and the Attorney General at the time and in the manner as either the Attorney General or the superintendent prescribes.

(7) The charitable trust must have in place procedures and policies to prohibit conflicts of interest, including those associated with grant-making activities that may benefit the converted stock insurer, its affiliates, any person who owns or controls any ownership interest in either the converted stock insurer or its affiliates and any directors or officers of the converted stock insurer or its affiliates. [PL 2003, c. 171, §5 (AMD).]

C. The superintendent has the right to intervene in the Superior Court proceeding. [PL 1997, c. 344, §1 (NEW).]

D. In approving, disapproving or approving with modification the charitable trust plan, the Superior Court may not review or decide the fair market value of the organization, including the methodologies for determining, allocating and transferring the fair market value of the organization. This paragraph does not in any way limit the appeal rights of any person under the Maine Rules of Civil Procedure, Rule 80(c) or under the Maine Administrative Procedure Act from the superintendent's final agency action on these matters pursuant to Title 24, section 2301, subsection 9-D. [PL 2003, c. 171, §6 (AMD).]

[PL 2003, c. 171, §§5, 6 (AMD).]

6. Modified charitable trust plan required for a material change in form. An organization shall notify the Attorney General and the superintendent of the organization's intent to engage in any transaction described in subsection 1, paragraph I at least 60 days prior to engaging in that transaction. Upon the superintendent's or the Attorney General's determination that a transaction described in subsection 1, paragraph I is a material change in form, notice must be given to the organization and the Attorney General or superintendent, as applicable. Within 90 days after the superintendent or the Attorney General issues a notice of the determination that a transaction described in subsection 1, paragraph I is a material change in form, other than through conversion to a domestic stock insurer pursuant to Title 24, section 2301, subsection 9-D, the Attorney General shall file an action in Superior Court under the Attorney General's charitable authority requesting the court to order the organization to submit to the superintendent, the court and the Attorney General a modified charitable trust plan containing the provisions set forth in subsection 5, paragraph I as the court determines are reasonable under the circumstances, together with any additional provisions as the court determines are reasonably required to coordinate the modified charitable trust plan with any proceeding instituted or to be instituted by the superintendent in connection with the material change in form. The Superior Court, after hearing, shall approve, approve with modifications or disapprove the modified charitable trust plan. The superintendent has the right to intervene in the Superior Court proceeding. In the event that either the superintendent or the court determines that a valuation of the organization is necessary, the superintendent shall conduct the valuation consistent with Title 24, section 2301, subsection 9-D. The superintendent may hold proceedings as the superintendent determines necessary to review an organization's proposal to materially change its form. If the modified charitable trust plan includes the creation of a charitable trust or public benefit corporation, the charitable trust or public benefit corporation may not include the organization or any person controlled by the organization.

[PL 2003, c. 171, §7 (AMD).]

7. Affiliates providing health insurance. This subsection governs health insurance affiliates.

A. A nonprofit hospital and medical service organization shall notify the Attorney General at least 60 days prior to directly or indirectly forming, acquiring, investing in or otherwise establishing a health insurance affiliate. [PL 1997, c. 344, §1 (NEW).]

B. Each health insurance affiliate shall expressly have corporate purposes that are consistent with or are in furtherance of the charitable and benevolent purposes of its public charity owners.

(1) Subject to subparagraph (2), the health insurance affiliate may further its purposes as described in this paragraph by:

(a) The provision of direct services that are consistent with or further the charitable and benevolent purposes of its public charity owners; or

(b) The payment of distributions or dividends to any public charity owner.

(2) The payment by the health insurance affiliate of distributions or dividends to any owner does not fulfill a health insurance affiliate's purposes as described in this paragraph if the payment of such distributions or dividends unreasonably interferes with the health insurance affiliate's ability to fulfill its purposes as described in this paragraph through the provision of direct services as described in subparagraph (1), division (a). Payment of dividends and distributions may be made to a for-profit owner consistent with this subparagraph but may not be considered to fulfill the health insurance affiliate's purposes as described in this paragraph.

(3) If the nonprofit hospital and medical service organization holding an ownership interest in a health insurance affiliate materially changes its form and the Superior Court has approved or approved with modifications a charitable trust plan or modified charitable trust plan, the purposes as described in this paragraph of the health insurance affiliate terminate unless the Superior Court determines otherwise. [PL 2003, c. 171, §8 (AMD).]

C. Any public charity that owns or controls an ownership interest in a health insurance affiliate must be treated as having acquired that ownership interest in furtherance of the charitable purposes of the public charity. [PL 2003, c. 171, §8 (AMD).]

D. The Attorney General may enforce the purposes as described in paragraph B of a health insurance affiliate under this subsection under the Attorney General's charitable authority to the same extent as if the health insurance affiliate were a public charity. [PL 2003, c. 171, §8 (AMD).]

E. A nonprofit hospital and medical service organization shall file with the Attorney General and the superintendent a charitable activities plan at least 60 days prior to the organization's sale of any ownership interest in a health insurance affiliate or the sale or other disposition of substantially all the assets of the health insurance affiliate.

(1) The charitable activities plan must set forth the charitable activities that the nonprofit hospital and medical service organization intends to pursue with the revenues or proceeds received from the sale of any ownership interest in a health insurance affiliate or the sale or other disposition of substantially all the assets of the health insurance affiliate.

(2) If the Attorney General concludes that the charitable activities plan does not fairly and equitably fulfill the nonprofit hospital and medical service organization's charitable purposes, the Attorney General shall bring an action in Superior Court under the Attorney General's charitable authority to challenge the charitable activities plan. The Attorney General shall provide to the superintendent prior written notice of any such action. The superintendent has the right to intervene in such action. If the Superior Court determines that the organization's charitable activities plan does not fairly and equitably fulfill the organization's purposes as described in paragraph B, the court shall issue orders necessary to remedy the inadequacies in the charitable activities plan.

(3) If a nonprofit hospital and medical service organization sells its ownership interest in a health insurance affiliate and the charitable activities plan filed with the Attorney General in connection with the sale has been approved by the Attorney General or the Superior Court, then the purposes described in paragraph B of a health insurance affiliate terminate unless the Superior Court determines otherwise. [PL 1997, c. 344, §1 (NEW).]

F. Each health insurance affiliate shall file an annual report with the Attorney General at the time and in the manner as the Attorney General shall establish describing the efforts that the affiliate has undertaken to fulfill its purposes as described in paragraph B, including, but not limited to, all direct services as described in paragraph B, subparagraph (1), division (a) and grant making. [PL 1997, c. 344, §1 (NEW).]

G. The sale by an organization of its ownership interest in a health insurance affiliate for fair market value, as determined by the superintendent, does not constitute a diversion of charitable assets. [PL 1997, c. 344, §1 (NEW).]

[PL 2003, c. 171, §8 (AMD).]

8. Annual report. The organization shall file an annual report with the Attorney General and the superintendent at the time and in the manner as the Attorney General establishes describing the efforts that the organization has undertaken to fulfill its charitable and benevolent purposes.

[PL 1997, c. 344, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 344, §1 (NEW). PL 1997, c. 344, §10 (AFF). PL 2001, c. 550, §B1 (AMD). PL 2003, c. 171, §§2-8 (AMD).

§194-B. Definitions

As used in this section and sections 194-C to 194-K, unless the context otherwise indicates, the following terms have the following meanings. [PL 2001, c. 550, Pt. A, §2 (NEW).]

1. Control. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, including but not limited to situations in which the power is the result of an official position with the person or a corporate office held by an individual.

[PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Conversion transaction. "Conversion transaction" means the sale, transfer, lease, exchange, transfer by exercise of an option, conveyance, conversion, merger or other disposition or the transfer of control or governance of the assets or operations of a public charity to a person other than a public charity incorporated or domiciled in this State. A disposition or transfer constitutes a conversion transaction regardless of whether it occurs directly or indirectly and whether it occurs in a single transaction or a related series of transactions. If exercise of an option constitutes a conversion transaction, any consideration received for the granting of the option must be considered part of the transaction for purposes of applying the review criteria in section 194-G. "Conversion transaction" does not include a transaction that supports or continues the charitable activities of the public charity, including but not limited to:

A. Granting of encumbrances in the ordinary course of business, such as security interests or mortgage deeds with respect to assets owned by the public charity or any wholly owned subsidiary to secure indebtedness for borrowed money, the net proceeds of which are paid solely to the public charity or its wholly owned subsidiaries or are applied to the public charity's charitable mission, and the foreclosing or other exercise of remedies permitted with respect to such encumbrances; [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. Sales or transfers for fair market value of:

(1) Any interest in property owned by the public charity or any wholly owned subsidiary, the net proceeds of which are paid solely to the public charity or any wholly owned subsidiary; or

(2) Money or monetary equivalents owned by a public charity or any wholly owned subsidiary in exchange for an interest in property, including securities as defined in Title 32, section 16102, subsection 28, to be held by the public charity or any wholly owned subsidiary; [PL 2005, c. 65, Pt. C, §2 (AMD).]

C. Awards, grants or payments to or on behalf of intended beneficiaries, consistent with the public charity's charitable purpose; and [PL 2001, c. 550, Pt. A, §2 (NEW).]

D. A change in the membership of the board of directors or officers of a public charity. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. C, §2 (AMD).]

3. Fair market value. "Fair market value" means the most likely value or range of values that assets, tangible or intangible, being sold would have in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and in their own best interest and a reasonable time being allowed for exposure in the open market. If the value of the assets being converted is $500,000 or more, the appraisal must include a value representing volunteer efforts and tax exemptions, if any, received during the operation of the public charity.

[PL 2001, c. 550, Pt. A, §2 (NEW).]

4. Independent appraisal of the fair market value. "Independent appraisal of the fair market value" means an appraisal conducted by persons independent of all parties to a proposed conversion transaction and experienced and expert in the area of appraisal of the type and form of property being valued. The appraisal must be conducted using professionally accepted standards for the type and form of property being valued. The appraisal must contain a complete and detailed description of the elements that make up the appraisal values produced and detailed support for the conclusions reached in the appraisal.

[PL 2001, c. 550, Pt. A, §2 (NEW).]

5. Person. "Person" means an individual, partnership, trust, estate, corporation, association, joint venture, joint stock company or other organization.

[PL 2001, c. 550, Pt. A, §2 (NEW).]

6. Public charity. "Public charity" has the same meaning as in section 194.

[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW). PL 2005, c. 65, §C2 (AMD).

§194-C. Notice and approval for conversion transaction

1. Notice or approval required. Prior to completing a conversion transaction, a public charity must:

A. If the fair market value of assets to be converted in the transaction is $500,000 or more, obtain approval of the court in accordance with section 194-F; [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. If the fair market value of assets to be converted in the transaction is less than $500,000 but at least $50,000, obtain approval from the Attorney General in accordance with section 194-E or, if the Attorney General does not approve the transaction, obtain approval from the court in accordance with section 194-F; or [PL 2001, c. 550, Pt. A, §2 (NEW).]

C. If the value of the transaction is less than $50,000, provide notice to the Attorney General in accordance with section 194-D. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Appraisal required. Fair market value must be determined by an independent appraisal for conversion transactions with a fair market value of $50,000 or more. If the appraisal provides a range of values, the highest point of the range determines which section of law applies to the transaction pursuant to subsection 1.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

3. Failure to comply with this section or sections 194-D to 194-H. A transaction consummated in violation of any provision of this section or sections 194-D to 194-H is voidable. Officers and directors who receive private inurement or excess benefits from such a transaction are subject to the civil penalties provided in section 194-K.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

4. Applicability to nonprofit hospital or medical service organizations. This section, section 194-B and sections 194-D to 194-K do not apply to a corporation or other entity licensed under Title 24, chapter 19. A conversion of a corporation or other entity licensed under Title 24, chapter 19 is governed by section 194-A and Title 24, section 2301, subsection 9-D.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

§194-D. Conversion transactions less than $50,000

A public charity shall provide written notice to the Attorney General of its intent to enter into a conversion transaction if the value of the transaction is less than $50,000. The notice must include the name of the public charity, the value of the assets to be converted and the entity to which the assets will be transferred. Twenty days after providing notice to the Attorney General in accordance with this section, the public charity is deemed to be in compliance with section 194-C and this section unless the Attorney General notifies the public charity within those 20 days that the value of the transaction is $50,000 or more or that the filing otherwise fails to comply with this section. [PL 2001, c. 550, Pt. A, §2 (NEW).]

The Attorney General is not required to take any action on notices received under this section, except that, upon request of a public charity that has properly provided notice under this section, the Attorney General shall issue a letter indicating that the public charity has complied with its obligation under this section, section 194-C and sections 194-E to 194-H. [PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

§194-E. Attorney General approval without court review

1. Filing with Attorney General. To obtain approval of a conversion transaction when the independent appraisal of the fair market value of the assets to be converted is $50,000 or more but is less than $500,000, a public charity must file a written request for approval with the Attorney General at least 90 days prior to consummating the transaction. The written request must include a conversion plan, a plan for distributing proceeds of the conversion consistent with section 194-H and any other information reasonably necessary for the Attorney General to complete a review of the transaction. Failure to provide the information described in this subsection in a timely manner is sufficient grounds for the Attorney General to refuse to approve the transaction.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Attorney General approval. The Attorney General shall approve a conversion transaction under subsection 1 if the Attorney General determines that the criteria set forth in section 194-G have

been met. The Attorney General shall refuse to approve a transaction if the Attorney General reasonably believes that the fair market value of the transaction is $500,000 or more.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

3. Public notice. Within 5 days of filing the request for approval under subsection 1, a public charity shall publish notice to the public of its intent to enter into a conversion transaction. Notice must be published once per week for 3 weeks in a newspaper of general circulation in the public charity's service area and must meet the following criteria.

A. A notice under this subsection must describe the proposed transaction, including the parties, the value of the transaction, the timing of the transaction, the potential impact on services to the public and the proposed plan for utilizing the proceeds. The public notice must also provide information on opportunities for the public to provide comment on the proposal to the Attorney General. [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. A notice under this subsection must be published in languages other than English whenever a significant number or percentage of the population eligible to be served or likely to be directly affected by the service or purpose of the public charity needs information in a language other than English to communicate effectively. For the purposes of this paragraph, "significant number" is defined as 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

4. Public comment. The Attorney General shall accept public comments regarding a proposed conversion transaction under this section for a 60-day period commencing the day that proper notice has been provided to the public of the proposed conversion.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

5. Public hearings. The Attorney General may hold public hearings if the Attorney General determines that a conversion transaction under this section is likely to cause a significant impact on access to services in the community served by the public charity.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

6. Public records. All documents submitted to the Attorney General by a person filing a request under subsection 1 in connection with the Attorney General's review of a proposed conversion transaction are public records subject to Title 1, chapter 13, subchapter I except records made confidential by statute or privileged under the Maine Rules of Evidence.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

7. Attorney General rejection of or failure to act on request for approval. If the Attorney General refuses to approve a conversion transaction under this section or fails to act on the request for approval within 90 days of receipt of the request, a public charity may request court approval of the transaction under section 194-F.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

8. Contracts with consultants; reimbursement for costs. To assist in the review of a proposed conversion transaction pursuant to this section, the Attorney General, at the Attorney General's sole discretion, may contract with experts or consultants the Attorney General considers appropriate.

A. Contract costs incurred by the Attorney General pursuant to this subsection may not exceed an amount that is reasonable and necessary to conduct the review of a proposed conversion transaction. A public charity filing a request under subsection 1 shall pay the Attorney General promptly upon request for all costs of contracts entered into by the Attorney General pursuant to this subsection but is not required to pay any amount that exceeds 5% of the fair market value of the assets to be converted. [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. The Attorney General is exempt from the provisions of applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this subsection. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

§194-F. Court approval

1. Filing of court action. To obtain approval of a conversion transaction when the independent appraisal of the fair market value of the assets to be converted is $500,000 or more, a public charity must file an action in Superior Court in the county in which the public charity's service area is located or in Kennebec County. Concurrent with filing an action in Superior Court, a public charity must file with the court and the Attorney General a conversion plan and a plan for distributing proceeds of the conversion consistent with section 194-H. The Attorney General must be made a party to the action.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Court action. The court shall approve a proposed conversion transaction under subsection 1 if the court finds by a preponderance of the evidence that the criteria set forth in section 194-G have been satisfied. The court may deny approval of a conversion transaction or may approve the transaction with or without modifications or conditions. The court may require any entity that receives the assets of the public charity as a result of the conversion to report annually to the Attorney General and the public and may require the entity to submit to monitoring and oversight by the Attorney General.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

3. Public notice. Within 5 days of filing an action under subsection 1, a public charity shall publish notice to the public of its intent to enter into a conversion transaction. Notice must be published once per week for 3 weeks in a newspaper of general circulation in the charity's service area and must meet the following criteria.

A. A notice under this subsection must describe the proposed transaction, including the parties, the value of the transaction, the timing of the transaction, the potential impact on services to the public and the proposed plan for utilizing the proceeds. The public notice must also include the court docket number and provide information on opportunities for the public to provide comment on the proposal to the Attorney General. [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. The notice must be published in languages other than English whenever a significant number or percentage of the population eligible to be served or likely to be directly affected by the service or purpose of the public charity needs information in a language other than English to communicate effectively. For purposes of this paragraph, "significant number" is defined as 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

4. Public access to conversion plan. The Attorney General shall make a conversion plan, the plan for distribution of proceeds, the valuation and any other documents filed under subsection 1 that are public records under Title 1, chapter 13, subchapter I and that are available electronically available for viewing on the Attorney General's publicly accessible site on the Internet as soon as feasible after the documents are filed with the Attorney General.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

5. Contracts with consultants; reimbursement for costs. To assist in the review of a proposed conversion transaction pursuant to this section, the Attorney General, at the Attorney General's sole discretion, may contract with experts or consultants the Attorney General considers appropriate.

A. Contract costs incurred by the Attorney General pursuant to this subsection may not exceed an amount that is reasonable and necessary to conduct the review of the proposed conversion transaction. Costs must be approved in advance by the court. The public charity filing an action under subsection 1 shall pay the Attorney General promptly upon request for all costs of contracts entered into by the Attorney General and approved by the court pursuant to this subsection. [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. The Attorney General is exempt from the provisions of applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this subsection. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

6. Filing with Secretary of State. A public charity shall file a copy of the court's approval under this section with the Secretary of State.

[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

§194-G. Review criteria

1. Required determinations. The Attorney General may not approve or recommend that a court approve and the court may not approve a proposed conversion transaction unless the Attorney General or the court, as appropriate, finds that:

A. The public charity will receive fair market value for its charitable assets. The fair market value must be based upon an appraisal conducted in accordance with subsection 3 and must use the projected closing date of the conversion transaction as the valuation date; [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. The proposed distribution of proceeds of the transaction complies with section 194-H; and [PL 2001, c. 550, Pt. A, §2 (NEW).]

C. The public charity considered the proposed conversion as the best alternative in carrying out its mission and purposes. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Considerations. In determining whether the criteria in subsection 1 are met, the Attorney General or the court, as appropriate, shall consider, as applicable, whether:

A. The public charity will receive fair market value for its charitable assets; [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. The terms and conditions of the agreement or transaction are fair and reasonable to the public charity; [PL 2001, c. 550, Pt. A, §2 (NEW).]

C. The fair market value of the public charity's assets to be transferred has been manipulated by the actions of the parties in a manner that causes the fair market value of the assets to decrease; [PL 2001, c. 550, Pt. A, §2 (NEW).]

D. The agreement or transaction will result in inurement to any private person or entity; [PL 2001, c. 550, Pt. A, §2 (NEW).]

E. The proposed conversion transaction will result in a breach of fiduciary duty or violate any statutory or common-law duty or obligation on the part of the directors, trustees or other parties involved in the transaction, including but not limited to conflicts of interest related to payments or benefits to officers, directors, board members, executives and experts employed or retained by the parties; [PL 2001, c. 550, Pt. A, §2 (NEW).]

F. The governing body of the public charity exercised due diligence in deciding to dispose of the public charity's assets, selecting the acquiring entity and negotiating the terms and conditions of the disposition; [PL 2001, c. 550, Pt. A, §2 (NEW).]

G. The Attorney General has been provided with sufficient information and data by the public charity to evaluate adequately the agreement or transaction and the effects of the agreement or transaction on the public; [PL 2001, c. 550, Pt. A, §2 (NEW).]

H. The proceeds of the conversion of the public charity are distributed to either an existing or new public benefit corporation or foundation pursuant to section 194-H; [PL 2001, c. 550, Pt. A, §2 (NEW).]

I. The proceeds of the proposed conversion transaction will be used in accordance with the rules of any trust under which the assets were held by the public charity and the proceeds will be controlled as funds independent of the acquiring entity or entities related to the acquiring entity; [PL 2001, c. 550, Pt. A, §2 (NEW).]

J. The entity surviving after the conversion transaction will be financially viable and competently managed; [PL 2001, c. 550, Pt. A, §2 (NEW).]

K. The transaction will diminish the availability and accessibility of services to the affected community; and [PL 2001, c. 550, Pt. A, §2 (NEW).]

L. The conversion plan and transaction complies with all applicable laws including the Maine Nonprofit Corporation Act and state tax code provisions. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

3. Valuation. A public charity shall submit to the Attorney General and the court an independent appraisal of the fair market value of assets to be converted under subsection 1. To the extent that the appraisal is based on a capitalization of the pro forma income of the converted assets, the appraisal must indicate the basis for determination of the income to be derived from any proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made regarding future earnings growth.

A. To the extent that an appraisal under this subsection is based on the comparison of the capital stock of the converted entity with outstanding capital stock of existing stock entities offering comparable products, the existing stock entities must be reasonably comparable to the converting entity in terms of such factors as size, market area, competitive conditions, profit history and expected future earnings. [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. If the value of assets being converted is $500,000 or more, the appraisal must include any element of value arising from the accomplishment or expectation of the conversion transaction, including any value attributable to projected operating efficiencies to result from the conversion, net of the cost of changes to produce such efficiencies. [PL 2001, c. 550, Pt. A, §2 (NEW).]

C. If the Attorney General or the court determines that an appraisal under this subsection is materially deficient or substantially incomplete, the Attorney General or the court may deem the entire conversion plan materially deficient or substantially incomplete and reject or decline to further process the application for conversion. [PL 2001, c. 550, Pt. A, §2 (NEW).]

D. A converting entity shall submit to the Attorney General and the court information demonstrating to the satisfaction of the Attorney General or the court the independence and expertise of any person preparing the appraisal or related materials under this subsection. [PL 2001, c. 550, Pt. A, §2 (NEW).]

E. An appraiser under this subsection may not serve as an underwriter or selling agent under the same conversion plan and an affiliate of an appraiser may not act as an underwriter or selling agent unless procedures are followed and representations and warranties made to ensure that an appraiser

is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way have an impact on the appraisal. [PL 2001, c. 550, Pt. A, §2 (NEW).]

F. An appraiser may not receive any other fee except the fee for services rendered in connection with the appraisal. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

§194-H. Distribution of proceeds

1. Requirements. The proceeds of a conversion transaction must be distributed to an existing or new foundation or public benefit corporation that meets the following requirements.

A. The foundation or public benefit corporation must operate pursuant to 26 United States Code, Section 501(c)(3) or 501(c)(4), and, regardless of whether the foundation is classified as a private foundation under 26 United States Code, Section 509, the foundation or public benefit corporation must operate in accordance with the restrictions and limitations that apply to private foundations found in 26 United States Code, Sections 4941 to 4945. [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. The foundation or public benefit corporation and its directors, officers and staff must be and remain independent of the for-profit company and its affiliates. A person who is an officer, director or staff member with influence over a conversion decision of a public charity submitting a conversion plan, at the time the plan is submitted or at the time of the conversion transaction or within 5 years thereafter, is not qualified to be an officer, director or staff member of the foundation. A director, officer, agent or employee of the public charity submitting the plan or the foundation receiving the charitable assets may not benefit directly or indirectly from the transaction. [PL 2001, c. 550, Pt. A, §2 (NEW).]

C. A foundation or public benefit corporation must have or establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefiting the for-profit corporation or members of the board of directors and management of the for-profit corporation. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

§194-I. Intervention in court proceeding

This section relates to intervention in proceedings under section 194-F. [PL 2001, c. 550, Pt. A, §2 (NEW).]

1. Right to intervene. Except as provided in subsection 2, the court, on timely application made pursuant to Rule 24(a) of the Maine Rules of Civil Procedure, shall allow any person who is interested in the outcome of a conversion proceeding to intervene as a party to that proceeding, notwithstanding the presence of the Attorney General in the action.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Court power to manage process. This section does not limit the power of the court to manage its cases by limiting the number of intervenors or by consolidating parties with similar interests.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

§194-J. Attorney General authority

1. Rules. The Attorney General may adopt rules the Attorney General considers appropriate to implement this section, sections 194-B to 194-I and section 194-K. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter II-A.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Attorney General authority not limited. This section, sections 194-B to 194-I and section 194-K do not limit the common-law authority of the Attorney General to protect charitable trusts and charitable assets in this State. The penalties and remedies provided in section 194-K are in addition to and are not a replacement for any other civil or criminal action the Attorney General may take under common law or statute, including an action to rescind the conversion transaction or to obtain injunctive relief or a combination of injunctive relief and other remedies available under common law or statute.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

§194-K. Penalties

1. Attorney General to bring action. The Attorney General may initiate an action in Superior Court to:

A. Void a conversion transaction pursuant to subsection 2. Such an action may be brought in Superior Court in Kennebec County or in the county in which the assets of the public charity to be transferred are located; [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. Seek a civil penalty against an individual pursuant to subsection 3. Such an action must be brought in the Superior Court of Kennebec County or in the county in which the individual resides; and [PL 2001, c. 550, Pt. A, §2 (NEW).]

C. Obtain on behalf of the public charity the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of Title 13-B standards. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Transaction voidable. The Superior Court may void a conversion transaction entered into in violation of applicable provisions of sections 194-C to 194-H. If the court voids the transaction, it may also grant any orders necessary to restore the public charity to its former position, including removing the board of the public charity or voiding contracts.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

3. Penalties against individuals. An individual officer, director, trustee or manager in a position to exercise substantial influence over the affairs of a public charity is subject to a civil penalty if that person, in violation of the standards established under Title 13-B for conduct by directors or officers or for avoiding conflicts of interest:

A. Receives property or consideration from the public charity that constitutes private inurement; or [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. Receives excess benefits that exceed the fair market value of anything provided in return. [PL 2001, c. 550, Pt. A, §2 (NEW).]

The civil penalty under this subsection may be an amount up to 100% of the excess benefit or private inurement received and may be recovered in addition to costs and fees incurred by the Attorney General in bringing the action.
[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

§195. Opinions on questions of law

The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor, by the head of any state department or any of the state agencies or by either branch of the Legislature or any members of the Legislature on legislative matters. [PL 1975, c. 771, §48 (RPR).]

SECTION HISTORY

PL 1973, c. 585, §§11,12,14 (AMD). PL 1973, c. 711, §3 (AMD). PL 1975, c. 771, §48 (RPR).

§196. Deputies and assistants; appointment and duties

The Attorney General may appoint one or more deputy attorneys general, assistant attorneys general and staff attorneys who serve at the pleasure of the Attorney General or until their successors are duly appointed and qualified. They may perform all the duties required of the Attorney General and other duties the Attorney General delegates to them. The Attorney General may appoint research assistants with any powers and duties the Attorney General delegates. Research assistants may perform duties delegated to them by the Attorney General, including activities authorized by Title 4, section 807. Notwithstanding any other provisions of law, the compensations of research assistants, law office manager and deputy attorneys general are fixed by the Attorney General. The compensation of the Deputy Chief Medical Examiner is fixed by the Attorney General in consultation with the Chief Medical Examiner and with the approval of the Governor. The compensations of the staff attorneys, assistant attorneys general and secretary to the Attorney General are fixed by the Attorney General with the approval of the Governor, but such compensations may not in the aggregate exceed the amount appropriated for those positions and may not result in an increased request to future Legislatures. [PL 2017, c. 284, Pt. DDD, §1 (AMD).]

Notwithstanding any other provision of law, whenever the written approval of the Attorney General is required by statute or court rule and the Attorney General either is unavailable to act upon the matter or has determined that it would be legally or ethically improper for the Attorney General to do so, the required approval may be given by a deputy attorney general specifically authorized in writing by the Attorney General to act on the Attorney General's behalf in these situations. [PL 2005, c. 154, §1 (AMD).]

SECTION HISTORY

PL 1969, c. 53, §1 (AMD). PL 1971, c. 439, §8 (AMD). PL 1973, c. 711, §4 (RPR). PL 1975, c. 96, §2 (AMD). PL 1975, c. 771, §49 (AMD). PL 1977, c. 380, §B1 (AMD). PL 1981, c. 67, §§F1,F2 (AMD). PL 1981, c. 549 (AMD). PL 1983, c. 824, §T (AMD). PL 1989, c. 410, §14 (AMD). PL 2005, c. 154, §1 (AMD). PL 2017, c. 284, Pt. DDD, §1 (AMD).

§197. State criminal inspectors; clerks; office expenses

The Attorney General is authorized to employ in his office in addition to the officers named in section 196, state criminal inspectors and additional clerks as the business of his office may demand, whose appointment and compensation shall be subject to the Civil Service Law. He may incur a reasonable expense for postage, printing, stationery and other office expenses. [PL 1985, c. 785, Pt. B, §11 (AMD).]

SECTION HISTORY

PL 1965, c. 478 (AMD). PL 1985, c. 785, §B11 (AMD).

§198. Additional assistant attorneys general, clerks or attorneys may be paid from moneys collected by department

Whenever the Attorney General shall appoint any additional assistant attorneys general or staff attorneys as authorized under section 196, or shall employ additional clerks as provided by section 197,

or shall employ attorneys-at-law to collect claims due the State, the compensation of such assistants, staff attorneys, clerks or attorneys, as approved by the Governor, may be paid, if the Governor so directs, from moneys thus collected by the Department of the Attorney General. [PL 1975, c. 771, §50 (AMD).]

SECTION HISTORY

PL 1973, c. 711, §5 (AMD). PL 1975, c. 771, §50 (AMD).

§199. Consultation with, and advice to, district attorneys

The Attorney General shall consult with and advise the district attorneys in matters relating to their duties. If in the Attorney General's judgment the public interest so requires, the Attorney General shall assist them by attending the grand jury in the examination of a case in which the accused is charged with treason or murder, and if in the Attorney General's judgment the public interest so requires, the Attorney General shall appear for the State in the trial of indictments for treason or murder. The Attorney General may institute and conduct prosecutions for all offenses against Title 21-A, and for that purpose attend and present evidence to grand juries and assist them in the examination of witnesses and drawing indictments. The Attorney General may, in the Attorney General's discretion, act in place of or with the district attorneys, or any of them, in instituting and conducting prosecutions for crime, and is invested, for that purpose, with all the rights, powers and privileges of each and all of them. Any or all of the powers and duties enumerated in this chapter may, at the discretion of the Attorney General, be delegated to and performed by, any deputy attorney general, assistant attorney general or staff attorney. The authority given under this section shall not be construed to deny or limit the duty and authority of the Attorney General as heretofore authorized, either by statute or under the common law. [PL 1989, c. 502, Pt. A, §11 (AMD).]

SECTION HISTORY

PL 1969, c. 53, §2 (AMD). PL 1973, c. 567, §1 (AMD). PL 1973, c. 711, §6 (AMD). PL 1989, c. 502, §A11 (AMD).

§200. Attendance at law court and instruction of county attorneys

(REPEALED)

SECTION HISTORY

PL 1977, c. 240, §1 (RP).

§200-A. Criminal division

The Attorney General is authorized to create a Criminal Division within the Department of the Attorney General in order to coordinate all criminal investigation and prosecution for the purpose of improving law enforcement within the State of Maine. [PL 1967, c. 58, §1 (NEW).]

The Attorney General shall have full responsibility for the direction and control of all investigation and prosecution of homicides and such other major crimes as the Attorney General may deem necessary for the peace and good order of the State of Maine. [PL 1967, c. 58, §1 (NEW).]

The Attorney General shall conduct and control all drug-related investigations of public officials or members of the law enforcement community. [PL 1991, c. 837, Pt. B, §3 (NEW).]

The Attorney General has exclusive responsibility for the direction of any criminal investigation of an official holding a partisan public office when the alleged crime is a violation of Title 17-A, chapter 25 or when, in the Attorney General's opinion, the alleged crime may affect the official's performance in office. As used in this section, the term "partisan public office" means an office in which, prior to an election to fill the office, the candidate must declare membership in a political party, or an office filled by the appointment of the Governor, the President of the Senate or the Speaker of the House of Representatives. Any law enforcement agency investigating an alleged crime that may result in formal

charges against an official holding partisan public office shall, as soon as practicable, notify the Attorney General of the investigation. The Attorney General may, after review, designate any law enforcement agency to complete the investigation and direct its completion. [PL 1991, c. 841, §3 (NEW).]

The Attorney General has exclusive responsibility for the direction and control of any criminal investigation of a law enforcement officer who, while acting in the performance of that law enforcement officer's duties, uses deadly force, as defined in Title 17-A, section 2, subsection 8. Any law enforcement agency whose officer uses deadly force shall notify, as soon as practicable, the Attorney General of the event. [PL 1995, c. 200, §1 (NEW).]

SECTION HISTORY

PL 1967, c. 58, §1 (NEW). PL 1991, c. 837, §B3 (AMD). PL 1991, c. 841, §3 (AMD). PL 1995, c. 200, §1 (AMD).

§200-B. Authority of Attorney General to request utility records

1. Public utility services.

[PL 1999, c. 686, §1 (RP).]

1-A. Definitions. As used in this section, the following terms have the following meanings.

A. "Internet service provider" means an entity that provides electronic communication or remote computation services, whether or not subject to the jurisdiction of the Public Utilities Commission. [PL 1999, c. 686, §1 (NEW).]

B. "Utility services" means:

(1) Services furnished by a public utility, as defined in Title 35-A, section 102, subsections 7, 8, 14, 15, 19, 20-B and 22, whether or not subject to the jurisdiction of the Public Utilities Commission;

(2) Services provided by an Internet service provider; and

(3) Mobile telecommunications services, as defined in Title 35-A, section 102, subsection 9-A, whether or not the provider of the mobile telecommunications services is subject to the jurisdiction of the Public Utilities Commission. [PL 1999, c. 686, §1 (NEW).]

[PL 1999, c. 686, §1 (NEW).]

2. Demand for records of utility services; cause. The Attorney General, a deputy attorney general or a district attorney may demand, in writing, all the records or information in the possession of the public utility or Internet service provider relating to the furnishing of public utility services or Internet services to a person or a location if the attorney has reasonable grounds to believe that the services furnished to a person or to a location by a public utility or Internet service provider are being or may be used for, or to further, an unlawful purpose.

Records of utility services, as applied to Internet service providers, are limited to the following information and records in the possession of the Internet service provider: the subscriber's or customer's name, address, local and long-distance telephone billing records, telephone number or other subscriber number or identity and length of time the services have been provided to the subscriber or customer.

Upon a showing of cause to any Justice of the Superior Court or Judge of the District Court, the justice or judge shall approve the demand. Showing of cause must be by the affidavit of any law enforcement officer.

[PL 1999, c. 686, §1 (AMD).]

3. Release of other information. An order approving a demand for records of utility services may include a provision prohibiting the provider of utility services from releasing the fact of the request

or that the records or information will be or have been supplied. The provider of utility services may not release the fact or facts without obtaining a court order to that effect.
[PL 1999, c. 686, §1 (AMD).]

4. Production of records of utility services. Upon receipt of a demand, approved by a justice or judge, the provider of utility services shall immediately deliver to the attorney, or the attorney's designee or agent, making the request all the records or information demanded. A provider of utility services or employee of that provider of utility services is not criminally or civilly liable for furnishing any records or information in compliance with the order approving the demand.
[PL 1999, c. 686, §1 (AMD).]

5. Orders permitted under federal law. The Attorney General, a deputy attorney general or a district attorney may, upon an affidavit of an investigating law enforcement officer, make application to any Justice of the Superior Court or any Judge of the District Court for any order permitted pursuant to 18 United States Code, Section 3122(a)(2).
[PL 1995, c. 625, Pt. A, §2 (RPR).]

6. Notification; extension. Within 60 days of approval of the demand under subsection 2, the Attorney General, deputy attorney general or district attorney making the demand shall notify the person receiving the services that the demand for utility service records has been made and approved. Upon showing of reasonable cause by the Attorney General, deputy attorney general or district attorney, the court may extend the period within which notice must be given for a definite period of time.
[PL 1999, c. 686, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 275 (NEW). PL 1985, c. 393 (AMD). PL 1987, c. 141, §B2 (AMD). PL 1987, c. 260 (AMD). PL 1987, c. 769, §A9 (RPR). PL 1995, c. 225, §1 (AMD). PL 1995, c. 327, §1 (RPR). PL 1995, c. 625, §A2 (RPR). PL 1999, c. 398, §A1 (AMD). PL 1999, c. 398, §A105 (AFF). PL 1999, c. 579, §1 (AMD). PL 1999, c. 686, §1 (AMD).

§200-C. State Fraud Division

1. Establishment. The Attorney General is authorized to create a State Fraud Division, hereinafter referred to in this section as the "division," within the Department of the Attorney General.
[PL 1975, c. 715, §1 (NEW).]

2. Purpose. The purpose of the division shall be to investigate and prosecute, including actions for civil recovery, any act of fraud or attempted fraud perpetrated against the State or any department, agency or commission thereof. The division shall not have primary responsibility for the investigation of any act of fraud or attempted fraud or incident of commingling or misapplication of funds pursuant to Title 22, section 13, subsection 2.
[PL 1975, c. 715, §1 (NEW).]

3. Cooperation, information. All agencies of the State and municipal governments shall cooperate fully with the division, rendering any assistance requested by the division. Every head of a department, bureau, division, commission or any other unit of State Government shall report in writing to the division any suspected act of fraud or attempted fraud or violation of any law in connection with funds of the State. Any such act or violation involving funds administered by the Department of Health and Human Services shall be reported pursuant to Title 22, section 13, subsection 3.
[PL 1975, c. 715, §1 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

All information in the files of any department, commission or agency of State Government, regardless of any statute relating to confidentiality, shall be available to the division for use in connection with its official purpose. [PL 1975, c. 715, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 715, §1 (NEW). PL 2003, c. 689, §B6 (REV).

§200-D. Complaints and investigative records confidential

(REPEALED)

SECTION HISTORY

PL 1975, c. 715, §1 (NEW). PL 1993, c. 719, §1 (RP). PL 1993, c. 719, §12 (AFF).

§200-E. Medical records furnished to prosecutor in certain cases

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

A. "Medical records" means all the records of the examination or treatment of a person relating to the alleged criminal act, in whatever medium preserved, including, but not limited to, records which are made confidential by any other provision of law. [PL 1985, c. 422 (NEW).]

B. "Victim" means a person who is or was the object of an alleged criminal act. In this section, a person who is certified by the prosecutor to be a victim, shall be considered a victim.

A victim includes, but is not limited to:

(1) A person certified to be deceased;

(2) An abused person who has not attained his 18th birthday;

(3) An abused person who reasonably appears to be incapacitated; or

(4) An abused person subject to guardianship, public guardianship or temporary guardianship. [PL 1985, c. 422 (NEW).]

[PL 1985, c. 422 (NEW).]

2. Medical examination; criminal proceeding or investigation. In any criminal proceeding or investigation, where medical examination or treatment has been provided to a victim, upon written request of the Attorney General or any of his deputies or assistants whom he designates in writing, or the district attorney or his deputy or assistants whom he designates in writing, any individual, partnership, association, corporation, institution or governmental entity which has rendered the examination or treatment shall immediately provide the authorized person with all medical records pertaining to the medical examination or treatment that are requested by the authorized person. Where the authorized person knows of circumstances or factors which would require production of fewer than all medical records, he shall attempt to request the specific medical records believed to be pertinent.

A. Unless otherwise provided by state or federal law, this section on the furnishing of confidential medical records governs. [PL 1985, c. 422 (NEW).]

[PL 1985, c. 422 (NEW).]

3. Medical records; copies. A person or entity who provides copies of medical records shall be entitled to be paid the reasonable costs of the provision of the copies as agreed upon by the person or entity who provides these copies and the authorized person making the request pursuant to this section. If the parties cannot agree, the Superior Court shall order reimbursement at a reasonable rate. The delay occasioned by any negotiations surrounding reimbursement or complaint to the Superior Court shall not delay the provision of the requested medical records.

[PL 1985, c. 422 (NEW).]

4. Medical records confidential. Medical records obtained by the authorized person pursuant to this section are confidential and shall not be disseminated to any person other than by order of court or to a member of the staff of the authorized person, a law enforcement officer specially assigned to the criminal proceeding or investigation, or other person who, by virtue of special knowledge or training,

is designated by the authorized person to assist him in the performance of his duty in the criminal proceeding or investigation.
[PL 1985, c. 422 (NEW).]

5. Civil contempt. Any person who is required to produce medical records by this section and intentionally or knowingly fails to do so within 20 days of the service of the written request upon him, may be subject to civil contempt for his failure to comply with the request.
[PL 1985, c. 422 (NEW).]

6. Immunity from liability. No individual, partnership, association, corporation, institution or governmental entity or employee or agent of a governmental entity may be criminally or civilly responsible for furnishing any medical records in compliance with this section.
[PL 1985, c. 422 (NEW).]

SECTION HISTORY

PL 1981, c. 242, §1 (NEW). PL 1985, c. 422 (RPR).

§200-F. Telephone communication by kidnappers

Whenever the Attorney General has reason to believe that one or more persons have been kidnapped, as defined by Title 17-A, section 301, he shall have the authority to order a public utility company employee to cut, reroute or divert telephone lines for the purpose of preventing telephone communication by the kidnapper with any person other than a law enforcement officer or a person authorized by a law enforcement officer to receive or transmit those communications. [PL 1981, c. 242, §1 (NEW).]

SECTION HISTORY

PL 1981, c. 242, §1 (NEW).

§200-G. Strip searches and body cavity searches

1. Rules promulgated. The Attorney General shall promulgate rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, relating to strip searches and body cavity searches of arrestees. These rules shall be a guide for the conduct of law enforcement officers in enforcing the law and shall establish acceptable procedures for conducting a strip search or a body cavity search of an arrestee when the arrestee is concealing a weapon or where an officer has a reasonable belief that the arrestee may be concealing contraband or evidence of a crime.

A copy of these rules shall be furnished to each officer within the Department of Public Safety and to each sheriff's department and police department statewide and shall be filed and be available for public inspection at the headquarters of each department.
[PL 1983, c. 789, §1 (NEW).]

2. Conditions. The rules promulgated by this subsection shall be subject to the following conditions:

A. [PL 2003, c. 196, §1 (RP).]

B. Strip searches or body cavity searches of the mouth shall be conducted by an officer or officers or by authorized medical personnel of the same sex as the arrestee under conditions so that the search cannot be observed by persons other than the officer or officers or authorized medical personnel conducting the search. [PL 1983, c. 789, §1 (NEW).]

C. Body cavity searches other than of the mouth shall be conducted by medically trained personnel of the same sex as the arrestee under conditions so that the search cannot be observed by persons other than those conducting the search. [PL 1983, c. 789, §1 (NEW).]

D. Each strip search or body cavity search shall be recorded in a log kept by the Department of Public Safety, sheriff's department or police department indicating the person who ordered the search, the name of the arrestee and the parts of the body searched. [PL 1983, c. 789, §1 (NEW).]

[PL 2003, c. 196, §1 (AMD).]

3. Immunity. A person is immune from criminal or civil liability for an act or omission in conducting a body cavity search if:

A. The body cavity search is pursuant to a search warrant directing the body cavity search; [PL 1999, c. 290, §1 (NEW).]

B. The person is authorized to conduct a body cavity search under the rules adopted pursuant to subsection 1; and [PL 1999, c. 290, §1 (NEW).]

C. The person uses due care in conducting the body cavity search. [PL 1999, c. 290, §1 (NEW).]

Nothing in this subsection requires a person authorized to conduct body cavity searches to conduct a body cavity search pursuant to a search warrant.

[PL 1999, c. 290, §1 (NEW).]

SECTION HISTORY

PL 1983, c. 789, §1 (NEW). PL 1999, c. 290, §1 (AMD). PL 2003, c. 196, §1 (AMD).

§200-H. Maine Elder Death Analysis Review Team

There is created, within the Office of the Attorney General, the Maine Elder Death Analysis Review Team, referred to in this section as "the team." [PL 2003, c. 433, §1 (NEW).]

1. Composition. The team is composed of 16 members as follows:

A. The Chief Medical Examiner, ex officio; [PL 2003, c. 433, §1 (NEW).]

B. The Director of Investigations for the Office of the Attorney General, ex officio; [PL 2003, c. 433, §1 (NEW).]

C. The Director of the Division of Licensing and Regulatory Services within the Department of Health and Human Services, ex officio; [PL 2007, c. 324, §1 (AMD).]

D. The Director of the Health Care Crimes Unit within the Office of the Attorney General, ex officio; [PL 2003, c. 433, §1 (NEW).]

E. The Director of Aging Planning and Resources Development within the Department of Health and Human Services, Office of Elder and Adult Services, ex officio; [PL 2009, c. 149, §1 (AMD).]

F. The Director of the Adult Protective Services program within the Department of Health and Human Services, Office of Elder and Adult Services, ex officio; [PL 2009, c. 149, §1 (AMD).]

G. The Director of Adult Mental Health Services within the Department of Health and Human Services, ex officio; [PL 2003, c. 433, §1 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

H. The executive director of the long-term care ombudsman program, as established in Title 22, section 5106, subsection 11-C, ex officio; [PL 2003, c. 433, §1 (NEW).]

H-1. A sexual assault nurse examiner within the Department of Health and Human Services; [PL 2015, c. 267, Pt. GG, §1 (AMD).]

I. A representative of victim services, appointed by the Attorney General; [PL 2003, c. 433, §1 (NEW).]

J. A commanding officer of the Criminal Investigation Division within the Department of Public Safety, Bureau of the State Police, appointed by the Attorney General; [PL 2003, c. 433, §1 (NEW).]

K. A prosecutor, nominated by a statewide association of prosecutors and appointed by the Attorney General; [PL 2003, c. 433, §1 (NEW).]

L. A police chief, nominated by a statewide association of chiefs of police and appointed by the Attorney General; [PL 2009, c. 149, §1 (AMD).]

M. A sheriff, nominated by a statewide association of sheriffs and appointed by the Attorney General; [PL 2009, c. 149, §1 (AMD).]

N. A physician, a geriatrician or a primary care physician who works in the area of elder care, nominated by a statewide association of physicians and appointed by the Attorney General; and [PL 2009, c. 149, §1 (NEW).]

O. An emergency medical services' person, nominated by a statewide association of emergency medical services professionals and appointed by the Attorney General. [PL 2009, c. 149, §1 (NEW).]

[PL 2015, c. 267, Pt. GG, §1 (AMD).]

2. Designees; terms of office. An ex officio member may appoint a designee to represent the ex officio member on the team. A designee, once appointed, qualifies as a full voting member of the team who may hold office and enjoy all the other rights and privileges of full membership on the team. All of the appointed members of the team serve for a term of 3 years. Any vacancy on the team must be filled in the same manner as the original appointment, but for the unexpired term.

[PL 2003, c. 433, §1 (NEW).]

3. Meetings; officers. The team shall meet at such time or times as may be reasonably necessary to carry out its duties, but it shall meet at least once in each calendar quarter at such place and time as the team determines, and it shall meet at the call of the chair. The Attorney General shall call the first meeting before January 1, 2004. The team shall organize initially and thereafter annually by electing a chair and a vice-chair from among its members. The vice-chair shall also serve as secretary.

[PL 2003, c. 433, §1 (NEW).]

4. Powers and duties. The team shall examine deaths and serious injuries associated with suspected abuse or neglect of elderly adults and vulnerable adults. The purpose of such examinations is to identify whether systems that have the responsibility to assist or protect victims were sufficient for the particular circumstances or whether such systems require adjustment or improvement. The team shall recommend methods of improving the system for protecting persons from abuse and neglect, including modifications of statutes, rules, training and policies and procedures.

[PL 2003, c. 433, §1 (NEW).]

5. Access to information and records. In any case subject to review by the team, upon oral or written request of the team, notwithstanding any other provision of law, any person that possesses information or records that are necessary and relevant to a team review shall as soon as practicable provide the team with the information and records. Persons disclosing or providing information or records upon request of the team are not criminally or civilly liable for disclosing or providing information or records in compliance with this subsection.

[PL 2003, c. 433, §1 (NEW).]

6. Confidentiality. The proceedings and records of the team are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The Office of the Attorney General shall disclose conclusions of the review team upon request, but may not disclose information, records or data that are otherwise classified as confidential.

[PL 2003, c. 433, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 433, §1 (NEW). PL 2003, c. 689, §B6 (REV). PL 2007, c. 324, §1 (AMD). PL 2009, c. 149, §1 (AMD). PL 2015, c. 267, Pt. GG, §1 (AMD).

§200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.
[PL 2007, c. 603, §1 (NEW).]

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411; [PL 2007, c. 603, §1 (NEW).]

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws; [PL 2007, c. 603, §1 (NEW).]

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws; [PL 2007, c. 603, §1 (NEW).]

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; [PL 2013, c. 229, §1 (AMD).]

E. Make recommendations concerning ways to improve public access to public records and proceedings; and [PL 2013, c. 229, §1 (AMD).]

F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests. [PL 2013, c. 229, §2 (NEW).]
[PL 2013, c. 229, §§1, 2 (AMD).]

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.
[PL 2007, c. 603, §1 (NEW).]

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.
[PL 2007, c. 603, §1 (NEW).]

5. Report. The ombudsman shall submit a report not later than January 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

A. The total number of inquiries and complaints received; [PL 2007, c. 603, §1 (NEW).]

B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials; [PL 2007, c. 603, §1 (NEW).]

C. The number of complaints received concerning respectively public records and public meetings; [PL 2007, c. 603, §1 (NEW).]

D. The number of complaints received concerning respectively:

(1) State agencies;

(2) County agencies;

(3) Regional agencies;

(4) Municipal agencies;

(5) School administrative units; and

(6) Other public entities; [PL 2007, c. 603, §1 (NEW).]

E. The number of inquiries and complaints that were resolved; [PL 2007, c. 603, §1 (NEW).]

F. The total number of written advisory opinions issued and pending; and [PL 2007, c. 603, §1 (NEW).]

G. Recommendations concerning ways to improve public access to public records and proceedings. [PL 2007, c. 603, §1 (NEW).]

[PL 2015, c. 250, Pt. B, §1 (AMD).]

6. Repeal.

[PL 2009, c. 240, §7 (RP).]

SECTION HISTORY

PL 2007, c. 603, §1 (NEW). PL 2009, c. 240, §7 (AMD). PL 2013, c. 229, §§1, 2 (AMD). PL 2015, c. 250, Pt. B, §1 (AMD).

§200-J. Cold case homicide unit

The Attorney General in collaboration with the Commissioner of Public Safety shall establish a cold case homicide unit within the Department of the Attorney General to work exclusively on unsolved murders in the State. The unit must consist of personnel from the Department of the Attorney General and the Department of Public Safety, Bureau of State Police and must include at a minimum one attorney from the Department of the Attorney General, 2 detectives from the Bureau of State Police and one employee of the bureau's crime laboratory. The Attorney General shall adopt rules for the operation of the unit. Rules adopted pursuant to this section are routine technical rules as defined in chapter 375, subchapter 2-A. [PL 2013, c. 585, §1 (NEW); PL 2013, c. 585, §4 (AFF); PL 2015, c. 267, Pt. D, §1 (AFF).]

SECTION HISTORY

PL 2013, c. 585, §1 (NEW). PL 2013, c. 585, §4 (AFF). PL 2015, c. 267, Pt. D, §1 (AFF).

§200-K. Deadly Force Review Panel

There is created, within the Office of the Attorney General, the Deadly Force Review Panel, referred to in this section as "the panel." The panel must, to the extent practicable, include members that reflect the diversity of Maine's racial, gender, indigenous and tribal demographics. [PL 2019, c. 435, §1 (NEW).]

1. Composition. The panel is composed of 15 members as follows:

A. The Commissioner of Public Safety, ex officio; [PL 2019, c. 435, §1 (NEW).]

B. The director of investigations for the Office of the Attorney General, ex officio; [PL 2019, c. 435, §1 (NEW).]

C. The Director of the Maine Criminal Justice Academy, ex officio; [PL 2019, c. 435, §1 (NEW).]

D. The Chief Medical Examiner, ex officio; [PL 2019, c. 435, §1 (NEW).]

E. An attorney who represents plaintiffs in actions under 42 United States Code, Section 1983 appointed by the Attorney General; [PL 2019, c. 435, §1 (NEW).]

F. A municipal police chief appointed by the Attorney General; [PL 2019, c. 435, §1 (NEW).]

G. A county sheriff appointed by the Attorney General; [PL 2019, c. 435, §1 (NEW).]

H. A mental health professional appointed by the Attorney General; [PL 2019, c. 435, §1 (NEW).]

I. A representative of a statewide collective bargaining organization for law enforcement employees appointed by the Attorney General; [PL 2019, c. 435, §1 (NEW).]

J. A representative of a statewide civil rights organization whose primary mission is related to racial justice appointed by the Attorney General; [PL 2019, c. 435, §1 (NEW).]

K. An attorney who represents defendants in actions under 42 United States Code, Section 1983 appointed by the Attorney General; [PL 2019, c. 435, §1 (NEW).]

L. A criminal prosecutor appointed by the Attorney General; and [PL 2019, c. 435, §1 (NEW).]

M. Three citizens, each of whom is not and has never been a sworn law enforcement officer, appointed by the Attorney General. [PL 2019, c. 435, §1 (NEW).]

[PL 2019, c. 435, §1 (NEW).]

2. Designees; terms of office. An ex officio member of the panel may appoint a designee to represent the ex officio member on the panel for one or more meetings. A designee, once appointed, qualifies as a full voting member of the panel and may hold office and enjoy all the other rights and privileges of full membership on the panel. The appointed members of the panel serve for a term of 3 years. Any vacancy on the panel must be filled in the same manner as the original appointment for the unexpired term.

[PL 2019, c. 435, §1 (NEW).]

3. Meetings; officers. The Attorney General shall call the first meeting before January 1, 2020. The panel shall organize initially and annually thereafter by electing a chair and a vice-chair from among its members. The vice-chair shall also serve as secretary. The panel shall meet at such time or times as may be reasonably necessary to carry out its duties, but it shall meet at least once in each calendar quarter at such place and time as the panel determines and it shall meet at the call of the chair.

[PL 2019, c. 435, §1 (NEW).]

4. Powers and duties. The panel shall examine deaths or serious injuries resulting from the use of deadly force by a law enforcement officer after the Attorney General has completed the investigation of the use of deadly force under section 200-A. The purpose of such examinations is to identify whether there was compliance with accepted and best practices under the particular circumstances and whether the practices were sufficient for the particular circumstances or whether the practices require adjustment or improvement. The panel shall recommend methods of improving standards, including changes to statutes, rules, training, policies and procedures designed to ensure incorporation of best practices that demonstrate increased public safety and officer safety.

[PL 2019, c. 435, §1 (NEW).]

5. Access to information and records. In any case subject to review by the panel, unless prohibited by federal law and notwithstanding any provision of law to the contrary, upon oral or written

request of the panel, any person who possesses information or records that are necessary and relevant to a panel review shall as soon as practicable provide the panel with the information and records. Persons disclosing or providing information or records upon request of the panel are not criminally or civilly liable for disclosing or providing information or records in compliance with this subsection. The panel in its discretion may consult with content experts or other professionals and discuss necessary information or records within the scope of such consultations.
[PL 2019, c. 435, §1 (NEW).]

6. Confidentiality. The proceedings of the panel are not public proceedings and the records of the panel are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The Legislature may inspect and review records covered by this subsection under conditions that protect the information from further disclosure. The Office of the Attorney General shall disclose conclusions of the panel but may not disclose information, records or data that are otherwise classified as confidential.
[PL 2019, c. 435, §1 (NEW).]

7. Incident examination and annual reports. Within 30 days of the conclusion of the examination of the use of deadly force by a law enforcement officer under subsection 4, the panel shall submit a report on the panel's activities, conclusions and recommendations with regard to the incident to the joint standing committee of the Legislature having jurisdiction over judiciary matters. The panel shall submit a report by January 30, 2021, and annually thereafter, that summarizes the panel's meetings and the incidents of the use of deadly force by law enforcement officers that resulted in deaths or serious injuries that the panel examined in the preceding year.
[PL 2019, c. 435, §1 (NEW).]

REVISOR'S NOTE: §200-K. Attorney General procedures and programs to eliminate profiling as enacted by PL 2019, c. 410, §1 is REALLOCATED TO TITLE 5, SECTION 200-L

SECTION HISTORY

PL 2019, c. 435, §1 (NEW).

§200-L. Attorney General procedures and programs to eliminate profiling

(REALLOCATED FROM TITLE 5, SECTION 200-K)

1. Complaints. The Attorney General shall implement procedures for receiving, investigating and responding to complaints alleging profiling by law enforcement officers or law enforcement agencies.
[PL 2019, c. 410, §1 (NEW); RR 2019, c. 1, Pt. A, §4 (RAL).]

2. Rules. In consultation with interested parties, including law enforcement agencies and community, professional, research, civil liberties and civil rights organizations, the Attorney General may adopt rules for the operation of administrative complaint procedures and independent audit programs to ensure that programs and procedures provide an appropriate response to allegations of profiling by law enforcement officers or law enforcement agencies. Rules may contain guidelines and ensure the fairness, effectiveness and independence of the administrative complaint procedures and independent auditor programs. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.
[PL 2019, c. 410, §1 (NEW); RR 2019, c. 1, Pt. A, §4 (RAL).]

SECTION HISTORY

PL 2019, c. 410, §1 (NEW). RR 2019, c. 1, Pt. A, §4 (RAL).

§201. Attendance of witnesses; recognizances

When a criminal prosecution in which he appears is continued, the Attorney General shall cause the witnesses in behalf of the State to recognize to appear at the next term, unless otherwise directed by the court, and may procure the attendance of a witness living out of the State deemed by him material

in procuring an indictment or conviction. The court shall allow such witness a reasonable compensation beyond his legal fees.

§202. Employment of detectives

The Attorney General may, for the Department of the Attorney General or through the several district attorneys or other officers of the State, employ such detectives or other persons, offer rewards or use other means that the Attorney General considers advisable for the detection, arrest and apprehension of persons who commit crime in this State. Detectives with the department may exercise all the powers necessary to levy and enforce writs of execution on judgments owed to the State. Any property seized as payment towards a judgment owed to the State may be sold by the State at a surplus auction or in any other commercially reasonable manner. [PL 2007, c. 248, §2 (AMD).]

SECTION HISTORY

PL 1973, c. 567, §2 (AMD). PL 2007, c. 248, §2 (AMD).

§203. Appropriations

1. Expenses charged to appropriation. Such sum as may be appropriated for the purposes of this chapter may be expended under the direction of the Attorney General. The Attorney General shall, at the request of any state department, make or cause to be made investigations in behalf of the department and the Attorney General shall prosecute any case to such extent as may seem advisable with all the rights, powers and privileges of district attorneys. The expense of any such investigation and of any prosecution that results from the investigation is charged to this appropriation.
[PL 1991, c. 9, Pt. G, §1 (NEW).]

2. Legal services to agency with dedicated revenue. Notwithstanding any other provision of law, when the Attorney General provides legal services to any board or state agency that is financed in whole or in part by dedicated or federal revenues, the Attorney General may bill the board or agency at a reasonable rate determined by the Attorney General. An account may be established by the Attorney General for receipt of these revenues. Attorneys in the Office of the Attorney General may be paid in whole or in part from these accounts or in part from a General Fund account. After reimbursement to an account in the Office of the Attorney General is made, the remaining balance must be deposited in the General Fund.
[PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. X, §1 (AMD); PL 1991, c. 591, Pt. X, §1 (AMD).]

3. Allocation of work. Notwithstanding any other provision of law, the Attorney General has discretion to allocate legal work among the attorneys in the Department of the Attorney General without reference to position counts contained in any appropriation. If the provisions of this section are used to seek reimbursement for legal services for which there is specific appropriation, the Attorney General shall keep time records demonstrating the amount of legal services performed for which reimbursement is sought. The Attorney General shall submit a quarterly report detailing the manner in which legal work has been allocated among attorneys in that office pursuant to this subsection to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over audit and program review.
[PL 1991, c. 9, Pt. G, §1 (NEW).]

SECTION HISTORY

PL 1973, c. 567, §20 (AMD). PL 1991, c. 9, §G1 (RPR). PL 1991, c. 528, §RRR (AFF). PL 1991, c. 528, §X1 (AMD). PL 1991, c. 591, §X1 (AMD).

§203-A. Accounts established due to court orders or other settlements

Unless specifically ordered by the court to do otherwise, the Attorney General shall work with the Treasurer of State to deposit any revenue or money received as a result of any court order, court

settlement or other agreement into an other special revenue account of the State and all interest must be credited to the General Fund. When, pursuant to a court order or settlement, the Attorney General receives money that is specifically designated for antitrust enforcement or for enforcement of the Maine Unfair Trade Practices Act, the Attorney General is authorized to expend such funds for expert witness fees, copying of documents, transcripts and any other purpose in accordance with the court order. Any interest on such funds, unless otherwise ordered by the court, must be credited to the General Fund. The Attorney General shall provide an accounting of such funds to the Legislature in a form and as determined by the Office of Fiscal and Program Review. [PL 1991, c. 532, §1 (NEW); PL 1991, c. 532, §2 (AFF).]

SECTION HISTORY

PL 1991, c. 532, §1 (NEW). PL 1991, c. 532, §2 (AFF).

§204. Biennial reports

(REPEALED)

SECTION HISTORY

PL 1973, c. 567, §20 (AMD). PL 1977, c. 78, §9 (AMD). PL 1977, c. 240, §2 (RP).

§204-A. Annual report

The Attorney General, working with the district attorneys of the State, shall submit a report that compiles data from domestic violence prosecutors statewide to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs, the joint standing committee of the Legislature having jurisdiction over criminal justice matters and the joint standing committee of the Legislature having jurisdiction over judiciary matters on an annual basis. The first report must be submitted no later than October 1, 2001. [PL 1999, c. 746, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 746, §1 (NEW).

§205. Fees from prosecutors forbidden

The Attorney General shall not receive any fee or reward from or in behalf of any prosecutor for official services or, during the pendency of a prosecution, be engaged as counsel or attorney for either party in a civil action depending essentially on the same facts.

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