

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 28, 1995 to December 1, 1995**

**SECOND REGULAR SESSION**  
**January 3, 1996 to April 4, 1996**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 4, 1996**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

## CHAPTER 524

## S.P. 341 - L.D. 946

An Act Concerning Notification to  
Maine Workers and Contractors

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

Sec. 1. 5 MRSA §1743-C is enacted to read:

**§1743-C. Information to bidders on public  
improvement projects**

A public improvement project for the construction, altering, repairing, furnishing or equipping of a building or public works must meet the requirements of this section.

1. Information to potential bidders. The Bureau of General Services or the procuring agency shall ensure that the bidding documents provided to potential bidders state that information concerning the availability of state subcontractors and suppliers, including women-owned businesses, is available from the Bureau of General Services or the Department of Economic and Community Development. The statement must indicate that the use of subcontractors and suppliers and women-owned businesses in the State in the procurement of its goods and services is encouraged where possible.

2. Notice to businesses. The Bureau of General Services shall adopt policies to promote the participation by enterprises doing business in this State and residents of this State in procurement contracts where possible. Policies must include, but are not limited to, providing for the notification of enterprises doing business in this State of opportunities to participate as subcontractors and suppliers on procurement contracts in an amount estimated to be equal to or greater than \$100,000.

3. Notice to economic development organizations. The Bureau of General Services or the procuring state agency shall provide notice of all anticipated competitive contracting opportunities to an automated supplier matching service identified as appropriate by the Department of Economic and Community Development.

4. Annual education session. The Bureau of General Services shall sponsor an annual education session on procedures to procure contracts with the State. The Bureau of General Services shall notify business enterprises in this State who have demonstrated an interest in opportunities to participate as contractors, subcontractors or suppliers on procurement contracts of the time and place of this annual education session.

5. Annual report. On or before the first business day of July of each year, each state agency or department shall report to the Department of Economic and Community Development with information pertaining to the procurement contracts entered into in an amount equal to or greater than \$50,000 by that agency or department during the previous year. The information must include the subject matter and value of the contracts, designation of each contractor as a business enterprise of this State or a foreign business enterprise, the process used to select the contractors and the status of each contract.

6. Federal funds. The provisions in this section apply to contracts involving funds obtained from the Federal Government unless expressly prohibited by federal law or regulations adopted pursuant to those laws.

Sec. 2. 26 MRSA §1301, 2nd ¶ is enacted to read:

Any contract for public improvement that is awarded by the State or any department or agency of the State is subject to the competitive bidding process established under Title 5, chapter 155, subchapter I-A.

See title page for effective date.

## CHAPTER 525

## S.P. 615 - L.D. 1618

An Act to Reform the Standard of  
Fiduciary Prudence

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

Sec. 1. 18-A MRSA §3-703, sub-§(a), as enacted by PL 1979, c. 540, §1, is amended to read:

(a) ~~A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 7-302.~~ A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this Code, and as expeditiously and efficiently as is consistent with the best interests of the estate. ~~He~~ The personal representative shall use the authority conferred upon him the personal representative by this Code, the terms of the will, if any, and any order in proceedings to which he the personal representative is party for the best interests of successors to the estate. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described in section 7-302, except as follows.

(1) A personal representative, in developing an investment strategy, shall take into account the expected duration of the period reasonably required to effect distribution of the estate's assets.

(2) A personal representative may make distribution of an estate's assets in cash or in kind, in accordance with the devisees' best interests, and is not required either to liquidate the estate's assets or to preserve them for distribution.

(3) If any portion of an estate will pass to a devisee to be held for long-term investment purposes, the personal representative may, but need not, rely on the investment advice of the individual or institution that is the devisee of that portion of the estate in determining the appropriate investment plan for that portion. In the event of any such reliance, the personal representative is not liable for the investment performance of the portion of an estate invested in accordance with advice received from the devisee or the devisee's authorized agent.

**Sec. 2. 18-A MRSA §7-302**, as corrected by RR 1993, c. 1, §41, is repealed and the following enacted its place:

**§7-302. Trustee's standard of care and performance; fiduciary investments authorized**

(a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this section.

The prudent investor rule may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

(b) A trustee shall apply the following requirements in complying with the prudent investor rule.

(1) A trustee shall invest and manage trust assets, as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that a trustee shall consider in investing and managing trust assets

are all of the following that are relevant to the trust or its beneficiaries:

(i) General economic conditions;

(ii) The possible effect of inflation or deflation;

(iii) The expected tax consequences of investment decisions or strategies;

(iv) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;

(v) The expected total return from income and the appreciation of capital;

(vi) Other resources of the beneficiaries, to the extent the other resources are known to the trustee;

(vii) Needs for liquidity, regularity of income and preservation or appreciation of capital; and

(viii) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

(6) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those skills or that expertise.

(c) A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

(d) Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of this section.

(e) A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

(f) If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

(g) In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

(h) Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

(i) In delegating investment management functions:

(1) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(i) Selecting an agent;

(ii) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(iii) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation;

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation;

(3) A trustee who complies with the requirements of paragraph (1) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated; and

(4) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

(j) The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorize any investment or strategy permitted under this section: "investments permissible by law for investment of trust funds"; "legal investments"; "authorized investments"; "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in

regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital"; "prudent man rule"; "prudent trustee rule"; "prudent person rule"; or "prudent investor rule."

(k) This section must be applied and construed to effectuate its general purposes to make uniform the law with respect to the subject of the Uniform Prudent Investor Act among the states enacting it.

(l) This section may be cited as the "Maine Uniform Prudent Investor Act."

**Sec. 3. Application.** This Act applies to estates, trusts and other fiduciary relationships existing on and created after its effective date. As applied to relationships existing on its effective date, this Act governs only decisions or actions occurring after that date.

**Sec. 4. Effective date.** This Act takes effect January 1, 1997.

Effective January 1, 1997.

**CHAPTER 526**

**S.P. 627 - L.D. 1634**

**An Act to Clarify Professional Liability**

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

**Sec. 1. 13 MRSA §708-A, sub-§3, ¶B,** as enacted by PL 1995, c. 141, §2, is amended to read:

B. ~~Supervised or~~ Directly supervised and controlled that portion of a professional service rendered by another person that was performed negligently or in breach of any other legal duty.

See title page for effective date.

**CHAPTER 527**

**S.P. 634 - L.D. 1642**

**An Act to Extend Waivers of Certain Provisions of the Education Laws**

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

**Sec. 1. 20-A MRSA §4502, sub-§5, ¶B,** as amended by PL 1991, c. 622, Pt. X, §2, is further amended to read: