

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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

J.S. McCarthy Company
Augusta, Maine
1997

Animal fighting is a Class C crime. In addition to any other penalty authorized by law, the court shall impose a fine of not less than \$500 for each violation of this section.

See title page for effective date.

CHAPTER 691

H.P. 1655 - L.D. 2285

An Act Relating to Electric Industry Restructuring

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

Whereas, certain changes to the laws governing electric industry restructuring are immediately necessary in order to ensure a smooth and orderly transition to a competitive electric marketplace; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 32 MRSA §2401-A, sub-§4-A is enacted to read:

4-A. Employees displaced by utility divestiture. A person installing or servicing oil or solid fuel burner equipment in an electric generation facility that an electric utility divested pursuant to Title 35-A, section 3204 if that person was employed by an electric utility on March 1, 1998 and installed or serviced oil or solid fuel burner equipment in an electric generation facility owned by that electric utility;

This subsection is repealed March 1, 2000.

Sec. 2. 32 MRSA §15109, sub-§2, ¶A is enacted to read:

A. A person operating or supervising the operation of boilers or undertaking any other activity for which a license would otherwise be required under this section is exempt from the licensing requirements of this section if that person undertakes those activities in an electric generation facility that an electric utility divested pursuant to Title 35-A, section 3204 and that person was employed by an electric utility on March 1, 1998

and undertook those activities in an electric generation facility owned by that electric utility.

This paragraph is repealed on March 1, 2000.

Sec. 3. 35-A MRSA §1305, sub-§5 is enacted to read:

5. Use of advisory staff. This subsection applies to the participation of advisory staff and consultants in commission proceedings.

A. If an advisory staff member or consultant relies upon facts not otherwise in the record or presents to the commission any independent financial or technical analysis not otherwise in the record, the staff member or consultant:

- (1)** Shall place any such information into the record;
- (2)** Is subject to discovery; and
- (3)** Must be available to answer questions regarding those facts or analysis, in the same manner as witnesses in the proceeding, at a time sufficient to permit parties to respond.

This paragraph does not apply to reviews, evaluations or examinations of information, data, studies, analyses or computer modeling placed into the record by other parties or other aid or advice provided by advisory staff members or consultants. Compliance with this paragraph does not render the advisory staff member or consultant an advocate under the Maine Administrative Procedure Act.

B. On request of any party in a proceeding, the commission shall assign one or more staff members who are not advisors in the proceeding to rule on any objection to discovery requests made by or directed to advisors.

C. The commission may assign one or more staff members who are not advisors in a proceeding to facilitate negotiated settlements in the proceeding.

Sec. 4. 35-A MRSA §1310, sub-§1, ¶A, as enacted by PL 1989, c. 281, is amended to read:

A. In any commission proceeding in which standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., are implemented, the commission may order the utility to compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy

of the intervenor's position whenever the commission finds that:

(1) The position of the intervenor is not adequately represented by the Office of the Public Advocate or the Public Utilities Commission staff;

(2) The intervenor substantially contributed to the approval, in whole or in part, of a position advocated by the intervenor in the commission proceeding, except that, if no commission advocacy staff is appointed to a proceeding, the intervenor must be likely to contribute substantially to the conduct of the commission proceeding and to assist in the resolution of the issues raised in the proceeding; and

(3) Participation in the proceeding by the intervenor would impose a significant financial hardship on the intervenor.

Sec. 5. 35-A MRSA §1311-A, as enacted by PL 1993, c. 535, §1, is amended to read:

§1311-A. Protective orders; confidential information

Records placed under a protective order by the commission pursuant to the Maine Rules of Civil Procedure, Rule 26 (c) in accordance with this section, are within the scope of a privilege against discovery within the meaning of Title 1, section 402, subsection 3, paragraph B and are not public records while under the protective order.

1. Issuance of protective orders. The following provisions govern the commission's issuance of protective orders.

A. The commission may issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26 (c). When issued, a protective order must be served on the party seeking the order. Service must be in accordance with the Maine Rules of Civil Procedure, Rule 5 (b). A requirement to disclose information pursuant to a protective order does not take effect until 24 hours after service of the protective order on the party seeking the protective order.

B. In granting protective orders, the commission shall balance the need to keep the information confidential with the policies of conducting its proceedings in an open and fair manner where all parties have the right and opportunity to participate effectively as provided under the Maine

Administrative Procedure Act, the Maine Rules of Civil Procedure, the Maine Rules of Evidence and the Maine freedom of access laws.

C. The party requesting a protective order bears the burden of demonstrating the need for protection. The commission may partially and temporarily grant a request for a protective order, consistent with the provisions of paragraph D, to expedite the release of confidential information to certain parties, but the party seeking protection bears the burden of demonstrating that release of the information to other parties should be restricted. The commission may not issue a final order prohibiting or restricting access to a party without notice and an opportunity to be heard.

D. If the commission issues a protective order that denies a party access to information, the commission shall provide the information to the party's attorney, if any, subject only to the restriction that the attorney use the information solely for the purpose of the proceeding and not disclose the information to others, except that:

(1) The commission may deny an attorney access to information relating to bids if the attorney represents a party that made a competing bid; and

(2) The commission may impose further limitations if the commission finds that an attorney has a direct, personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information.

Unless the commission finds that the conditions of subparagraphs 1 or 2 are met, the obligations of attorneys under the ethical rules, including the obligation to decline representation in certain cases, the authority of the commission to discipline attorneys who appear before the commission, including the authority, under section 1502, to punish for contempt persons who fail to comply with a protective order, and the commission's ability to recommend sanctions by other bodies, including the discipline of attorneys by the courts and the Board of Overseers of the Bar, is sufficient security to permit the attorney to have access to information in order to represent a party before the commission.

E. The commission may prohibit or restrict the disclosure of information under protective order to a party's independent consultant only for compelling reasons and to the least extent necessary, except that the commission may require that the information be used only for the purposes of the

proceeding in which it is disclosed and may prohibit disclosure of the information by the independent consultant to others.

F. Notwithstanding any other provision of this subsection:

(1) The commission may deny all parties, including the commission and its staff, access to information if the commission finds that the potential for harm from disclosure of the information outweighs its probative value in the proceeding; and

(2) The commission may deny an attorney access to information under protective order if the commission finds that the attorney's request for access to the information is not made in good faith or that the attorney will not respect the terms of the protective order.

2. Appeal. A party required to disclose information pursuant to a protective order issued by a hearing examiner in accordance with subsection 1 may appeal to the commissioners sitting as the commission in accordance with this subsection.

A. The basis for an appeal brought pursuant to this subsection is that the potential for damage resulting from the disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding.

B. A party bringing an appeal pursuant to this subsection must file the appeal within 24 hours of service of the protective order.

C. If a party appeals in accordance with this subsection, the party is not required to disclose the information during the pendency of the appeal.

D. The commission shall render a decision on the appeal brought pursuant to this subsection within 7 business days of the filing of the appeal.

E. Notwithstanding subsection 1, the commission may impose limits on the disclosure of information beyond the limits imposed by the protective order issued in accordance with subsection 1 only if the commission finds that potential for damage resulting from disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding.

For purposes of this subsection, the term "hearing examiner" means a commission staff person authorized to issue a protective order in a commission proceeding.

Sec. 6. 35-A MRSA §3212, sub-§2, as enacted by PL 1997, c. 316, §3, is amended by amending the first paragraph to read:

2. Selection of standard-offer service providers. After terms and conditions for standard-offer service have been established under subsection 1, the commission shall administer a bid process to select a standard-offer service provider for that transmission and distribution utility's service territory. By July December 1, 1999, the commission shall review the bid submissions for each transmission and distribution utility and select the standard-offer service provider or providers for that utility's service territory.

Sec. 7. 35-A MRSA §3212, sub-§2, as enacted by PL 1997, c. 316, §3, is amended by adding at the end 2 new blocked paragraphs to read:

Notwithstanding any other provision of this Title, the commission may, in the event of a default by a standard-offer service provider, require the transmission and distribution utility in whose service territory the provider was providing standard-offer service to arrange and to provide for default service. The arrangement and provision of such default service by a transmission and distribution utility does not constitute selling electric energy or capacity at retail for purposes of section 3205, subsection 2.

Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by the State Purchasing Agent in conducting the competitive bidding process required under this section.

Sec. 8. 35-A MRSA §3213, sub-§3 is enacted to read:

3. Special assessment. Every electric utility and transmission and distribution utility subject to assessment under section 116 is subject to an additional assessment on its gross intrastate operating revenues for regulated services to produce:

A. No more than \$200,000 in the 1997-98 fiscal year;

B. No more than \$600,000 in the 1998-99 fiscal year;

C. No more than \$600,000 in the 1999-2000 fiscal year; and

D. No more than \$200,000 in the 2000-01 fiscal year.

All revenues derived from the assessments levied under this subsection must be deposited with the Treasurer of State in a separate account to be known as the Public Utilities Commission Consumer Education Fund, referred to in this subsection as "the fund." Revenues produced by the assessments may be

used by the commission only for the purposes of designing and implementing the consumer education program established pursuant to subsection 2. Funds in the fund not expended during any fiscal year may not lapse but must be carried forward. Any funds remaining in the fund at the conclusion of the consumer education program established pursuant to subsection 2 must be returned proportionally to utilities assessed under this subsection and passed through to ratepayers in an appropriate rate-setting proceeding.

Sec. 9. Allocation of the Public Utilities Commission Consumer Education Fund. The Public Utilities Commission Consumer Education Fund must be allocated as designated in the following schedule.

	1997-98	1998-99
PUBLIC UTILITIES COMMISSION		
Consumer Education Fund		
All Other	\$200,000	\$600,000
Allocates funds to fund the Public Utilities Commission consumer education program established pursuant to the Maine Revised Statutes, Title 35-A, section 3213.		

Sec. 10. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, sections 1 to 3 of this Act apply to all proceedings pending on the effective date of this Act except that Title 35-A, section 1311-A, subsections 1 and 2 do not apply to pending or future Public Utilities Commission proceedings in which the commission reviews a proposed sale of generation assets divested by an investor-owned electric utility pursuant to Title 35-A, section 3204.

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

Effective April 3, 1998.

CHAPTER 692

H.P. 1661 - L.D. 2288

An Act Regarding Telecommunications Regulation

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

Sec. 1. 35-A MRSA §7104, as enacted by PL 1991, c. 654, §4 and affected by §5, is repealed and the following enacted in its place:

§7104. Affordable telephone service

1. Low-income support. The commission shall require telephone utilities to participate in statewide outreach programs designed to increase the number of low-income telephone customers on the network through increased participation in any universal service program approved by the commission.

2. General availability. The commission shall seek to ensure that similar telecommunication services are available to consumers throughout all areas of the State at reasonably comparable rates.

3. Authority. The commission shall adopt rules to implement this section and may require providers of intrastate telecommunications services to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of this Title and the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56. Prior to requiring that providers of intrastate telecommunications services contribute to a state universal service fund, the commission shall assess the telecommunications needs of the State's consumers and establish the level of support required to meet those needs. If the commission establishes a state universal service fund pursuant to this section, the commission shall contract with an appropriate independent fiscal agent that is not a state entity to serve as administrator of the state universal service fund. Funds contributed to a state universal service fund are not state funds. Rules and any state universal service fund requirements established by the commission pursuant to this section must:

A. Be reasonably designed to maximize federal assistance available to the State for universal service purposes;

B. Meet the State's obligations under the federal Telecommunications Act of 1996, Public Law 104 - 104, 110 Stat. 56;

C. Be consistent with the goals of the federal Telecommunications Act of 1996, Public Law 104 - 104, 110 Stat. 56;

D. Ensure that any requirements regarding contributions to a state universal service fund be nondiscriminatory and competitively neutral;

E. Require explicit identification on customer bills of contributions to any state universal service fund established pursuant to this section; and