

# 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 scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2283

S. P. 734

In Senate, March 2, 1976

Reported by Senator Curtis of Penobscot from Committee on State Government pursuant to Joint Order S. P. 511 and printed under Joint Rules No. 3.

HARRY N. STARBRANCH, Secretary

Filed under Joint Rule 3 pursuant to S. P. 511.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SIX

**AN ACT to Provide for an Associate Administrative Court Judge and to  
Revise the Administrative Court Law.**

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

Sec. 1. 5 MRSA cc. 305 and 307, as amended, are repealed and the following enacted in place thereof:

CHAPTER 305

HEARINGS

§ 2401. Administrative Court

The Administrative Court, as heretofore established, shall be under the supervision of the Administrative Court Judge. In the event of his disability for any cause, an Associate Administrative Court Judge shall perform any and all of his duties. The Administrative Court shall be a court of record. The Administrative Court Judge shall establish a seal. He shall be responsible for the efficient operation of the Administrative Court and for the proper conduct of business therein.

1. Appointment of the Administrative Court Judge and Associate Administrative Court Judge. The Administrative Court Judge, as heretofore appointed, and Associate Administrative Court Judges shall be appointed by the Governor, with the advice and consent of the Council. Each shall hold office for a term of 7 years and until his successor has been appointed and qualified.

2. **Qualifications of Administrative Court Judge and Associate Administrative Court Judges.** The Administrative Court Judge and the Associate Administrative Court Judges shall be members of the bar of this State. Each shall devote full time to his Judicial duties, shall not practice law during his term of office, nor shall he during such term be the partner or associate of any person in the practice of law.

3. **Salary.** The Administrative Court Judge shall receive as annual compensation an amount which is \$1,500 less than that of a Superior Court Justice. He shall be entitled to actual and necessary expenses in the performance of his duties. He may employ necessary clerical assistance for the court. An Associate Administrative Court Judge shall receive as annual compensation an amount \$1,000 less than the Administrative Court Judge and he shall be entitled to actual and necessary expenses in the performance of his duties.

4. **Hearing.** On receipt of a written complaint from an agency, a judge of the Administrative Court shall conduct a hearing on the applicable facts and law governed by the Administrative Code. The judge may subpoena and examine witnesses in accordance with chapters 301 to 307. He shall issue a written decision containing his findings of fact and conclusions of law in each case.

5. **Disqualification of Administrative Court Judge.** Whenever the Administrative Court Judge determines that he has a personal interest or a financial interest, directly or indirectly, in a case which is before him, he shall disqualify himself from hearing an individual case. He shall assign the case to an Associate Administrative Court Judge. Whenever an Associate Administrative Court Judge determines that he has a personal interest or a financial interest, directly or indirectly, in a case which is before him, he shall disqualify himself and give written notice to the Administrative Court Judge.

Whenever all judges of the Administrative Court have disqualified themselves in a case, the Administrative Court Judge shall give written notice of same to the parties to the action and shall file a copy of the notice in the docket of the case.

The moving party shall, within 10 days thereafter, commence an action by filing or refiling his complaint in the District Court. Jurisdiction is granted to the District Court to hear and determine such matters and to enter such rulings and orders as the nature of the case may require. The case shall be heard in the District Court in accordance with the Administrative Code and the District Court Judge hearing the case shall render a written decision thereon. The court reporter from the Administrative Court shall transcribe the testimony as in cases before a judge of the Administrative Court. An aggrieved party may appeal from the decision of the District Court Judge to the Superior Court as is provided in the Administrative Code, chapters 301 to 307.

6. **Retirement.** Title 4, section 103, providing for compensation upon retirement of Justices of the Superior Court and to benefits for their spouses and surviving minor children, is made applicable to the Administrative Court Judge and Associate Administrative Court Judges. The years in which the

Administrative Court Judge served in the capacity of Administrative Hearing Commissioner during 1963 to 1969 shall be included in computing his retirement compensation and his spouse's and minor children's survivor benefits.

7. Judges of the Administrative Court. The Judges of the Administrative Court shall be the Administrative Court Judge and one Associate Administrative Court Judge.

§ 2402. Petition for declaratory rulings by Administrative Court Judge

On petition of any interested party, the Administrative Court Judge shall issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by an agency.

1. Effect of declaratory ruling. A declaratory ruling is binding with respect to the state of facts alleged, unless it is altered or set aside by the court. The ruling is subject to review in the Superior Court in the manner provided for appeal of decisions in contested cases.

2. Form of petition. The Administrative Court Judge shall prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition.

§ 2403. Procedure in contested cases

In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

1. Complaint filed. On commencement of any contested case, a written complaint must be filed with the Administrative Court Judge. A copy of the complaint containing a notice of hearing must be served on the defendant either by personal delivery in hand, by leaving it with a person of suitable age or discretion at his dwelling place or usual place of abode, or by sending it by registered mail to his last known address. The copy of the complaint must be served at least 15 days before the time specified for the hearing, except as provided in section 2404. The notice of hearing must inform the defendant of the time and place of hearing, the time limit for filing an answer to the complaint and the consequences of his failure to do so. The complaint must contain a conclusion indicating the violation of a statute or rule and citing the statute or rule violated.

2. Witnesses sworn. At the hearing before any testimony is received, the Administrative Court Judge shall swear in the witnesses.

3. Official record. The Administrative Court Judge shall prepare an official record, including testimony and exhibits, in each contested case, but he need not have a transcript of the testimony prepared unless required for rehearing or appeal. The record of the hearing may be taken by stenographic notes or by mechanical recording.

4. Disposition by agreement. On approval of the Administrative Court Judge, disposition of any contested case may be made by agreement or consent decree.

5. Rules of procedure. The Administrative Court Judge shall adopt and may amend or repeal rules of procedure in contested cases, including forms which he deems appropriate.

§ 2404. Emergency hearings

The Administrative Court Judge may require that a hearing be held in a contested case in less than 7 days after service of the complaint if either party on ex parte motion is able to show that an emergency exists which makes immediate action imperative. The moving party shall give the opposing party reasonable notice of the advanced hearing date.

§ 2405. Rules of evidence

The rules of evidence as applied in the trial of civil cases in the State shall be observed whenever practicable, except that this section shall not apply to hearings under Title 28.

1. Exception. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence which is not ordinarily admissible may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

2. Certain evidence excluded. The Administrative Court Judge shall exclude irrelevant, immaterial and unduly repetitious evidence.

3. Rules of privilege. The Administrative Court Judge shall give effect to rules of privilege recognized by law.

4. Cross-examination. A party may cross-examine the opposing party, a witness for the opposing party or a hostile witness.

5. Judicial notice. The Administrative Court Judge may take judicial notice of facts so noticed by the Superior Court. Facts judicially noticed shall be stated in the decision issued by him.

§ 2406. Subpoenas by Administrative Court Judge

At the request of a party in a contested case, the Administrative Court Judge shall issue subpoenas for the attendance of witnesses or for the production of documents. He may issue subpoenas on his own motion.

1. Failure to obey subpoena. A person who fails to obey the subpoena of the Administrative Court Judge may be punished as for contempt of court on application to the Superior Court by the Administrative Court Judge or by the party requesting issuance of the subpoena.

§ 2407. Decisions

After hearing on default, or by agreement of the parties, the Administrative Court Judge may suspend, revoke or modify the license of any party properly served with process, or if the applicable law so provides he may order issuance of a license to an applicant according to the terms of the applicable law. He may take any other action with relation to the party which could have been taken before the enactment of this section by the agency involved in the hearing.

1. Decision rendered by Administrative Court Judge. Each decision adverse to a party to the proceeding rendered by the Administrative Court Judge in a contested case must be in writing or stated in the record. A final decision must include findings of fact and conclusions of law. Findings of fact consist of a concise statement of the conclusions on each contested issue of fact.

2. Notification of the decision and order; suspension. The Administrative Court Judge shall notify the parties to the proceeding of the result of the hearing by sending a copy of the decision to each party or his attorney of record by registered mail, return receipt requested. There shall be no suspension ordered by the Administrative Court Judge until a date at least 2 weeks after the date of the notification of the decision and order, and if the aggrieved party, during the 2-week period, shall appeal the Administrative Court Judge's decision to the Superior Court, then no suspension shall take effect until after hearing by the Superior Court except that, when an Administrative Court Judge determines the violation in question constitutes an immediate and serious hazard to the public health or safety, he may order that the appropriate license suspension or revocation commence immediately or prior to the 2-week waiting period, and remain in effect, upon appeal, pending the disposition of the Superior Court.

## CHAPTER 307

### APPEALS

#### § 2451. Procedure

Any party aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to appeal.

1. Procedure. The appeal must be instituted by filing a complaint in the Superior Court at Kennebec County within 30 days after service of the final decision of the Administrative Court Judge, except as otherwise provided in Title 28. Copies of the complaint must be sent to the Administrative Court Judge and to all other parties of record. No responsive pleading need be filed.

2. Content of complaint. The complaint must contain a concise statement of the grounds upon which the appellant contends he is entitled to relief, and shall demand the relief to which he believes himself entitled.

3. Effect. The filing of the complaint does not stay enforcement of the decision, but the Superior Court may order a stay upon such terms as it deems proper.

4. Record. Within 30 days after service of the complaint, or within such further time as the court may order, the Administrative Court Judge shall transmit to the Superior Court the original or certified copy of the entire record of the proceeding under review, but by stipulation of all parties to the appeal the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

5. **Additional evidence.** If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Administrative Court Judge, the court may order the additional evidence to be taken before the Administrative Court Judge upon such conditions as the court deems proper. The Administrative Court Judge may modify his findings and decision by reason of the additional evidence and shall file with the Superior Court, to become a part of the record, the additional evidence, together with any modification or new findings or decision.

6. **Conducted by the court.** The appeal shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Administrative Court Judge not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

7. **Decision of court.** The court may affirm, modify or reverse the decision of the Administrative Court Judge according to the applicable law, or may remand the case for further proceedings.

#### § 2452. To Supreme Judicial Court

An aggrieved party may appeal from the decision of the Superior Court to the Supreme Judicial Court as in other civil cases.

Sec. 2. 28 MRSA § 153, sub-§ 1, last paragraph, 1st sentence, as repealed and replaced by PL 1975, c. 256, is repealed and the following enacted in place thereof:

Any applicant aggrieved by a decision made by the Bureau of Alcoholic Beverages may appeal the decision to the Administrative Court by means of filing a complaint with the Administrative Court Judge, designated in Title 5, chapters 301-307, and serving a copy of the complaint upon the bureau, within 15 days of the mailing of the decision of the bureau by registered or certified mail to the mailing address given by the applicant in his application for a special agency store permit.

Sec. 3. 28 MRSA, § 403, 6th, 7th and 8th sentences, as last amended by PL 1973, c. 303, § 3, are repealed and the following enacted in place thereof:

The operation of a suspension or revocation of a license imposed by the Administrative Court shall be suspended, pending judgment of the Superior Court, provided that the licensee files an appeal in the Superior Court and notifies the Administrative Court that the appeal has been filed, within 7 days of the mailing of the decision of the Administrative Court by registered or certified mail to the address given by the licensee at the time of his application for a license. Appeal by such aggrieved person to the law court from such decision may be taken. Upon such appeal, the law court may, after consideration, reverse or modify any decree so made by the court based upon an erroneous ruling or finding of law.

**Sec. 4. Reference.** The reference to the Executive Council contained in section 1 of the bill in Title 5, section 2401, subsection 1, shall be null and void effective January 1, 1977.

**Sec. 5. Appropriation.** There is appropriated from the General Fund to the Administrative Court the sum of \$31,500 to carry out the purposes of this Act. The breakdown shall be as follows:

		1976-77
<b>ADMINISTRATIVE COURT</b>		
Personal Services	(2)	\$29,500
All Other		2,000
		\$31,500

**FISCAL NOTE**

It is expected that the funds appropriated by this Act will be expended in the first year as follows:

Personal Services (2)		
Associate Administrative Court Judge		\$23,000
Clerical assistant		6,500
All Other		2,000
		\$31,500

**STATEMENT OF FACT**

The purpose of this bill is to provide the Administrative Court Judge, who currently serves alone, with one Associate Administrative Court Judge. The Administrative Court statute has been revised in general to remove past inconsistencies. This bill is an interim report of the Joint Standing Committee on State Government pursuant to its study of administrative procedures, S. P. 511.