

MAINE STATE LEGISLATURE

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(EMERGENCY)
(New Title)
New Draft of S. P. 259, L. D. 782

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1719

S. P. 478

In Senate, April 28, 1977

Reported by Senator Collins of Knox from Committee on Judiciary and
printed under Joint Rules No. 2.

MAY M. ROSS, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Resolve Certain Conflicts between the Statutes and the Maine
Rules of Evidence**

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

Whereas, certain provisions of the statutes are in conflict with provisions of the Maine Rules of Evidence, which by action of the Legislature supersede conflicting statutes; and

Whereas, a recent court ruling on an apparent conflict between a statute and a rule of evidence could have an immediate and severe impact on the budget and management of the Department of the Secretary of State; 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Sec. 1. 16 MRSA §§ 57 and 58, as enacted by PL 1965, c. 117, are repealed.

Sec. 2. 29 MRSA § 58, as amended by PL 1971, c. 360, § 6, is further amended to read:

§ 58. Certificate as evidence

~~The~~ Notwithstanding any other provision of law or rule of evidence, the certificate of the Secretary of State or his deputy, under seal of the State,

shall be received in any court in this State as prima facie evidence of the issuance, suspension or revocation of any operator's license or any certificate of registration of any vehicle.

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

STATEMENT OF FACT

In 1973 the Legislature enacted Title 4, section 9-A which authorized the Supreme Judicial Court to prepare and promulgate comprehensive rules of evidence to codify and update the existing rules of evidence which were found throughout the statutes and in judicial decisions. That statute also stated that, when the rules took effect, any inconsistent statutes were to be no longer in effect. The new rules took effect only after a period of time provided for legislative review and approval or disapproval.

Comprehensive legislation will be introduced, after further study, to amend or repeal all of the statutes which have been superseded by the Legislature's approval of the Maine Rules of Evidence, which took effect on February 2, 1976. In the meantime, 2 immediate conflicts have arisen.

The first instance is the original version of L. D. 782. It would have repealed the existing statute on privileged communications to the clergy, which has been superseded by the rules, and replaced it with a provision copied exactly from the new rule of evidence on this form of communication, which is broader than the statute. Such legislation is unnecessary because the new rule is now the law of Maine in this area and it may cause doubts about the efficacy of the other rules. The new draft, in advance of the more comprehensive legislation, therefore simply repeals the existing inconsistent statutes.

The 2nd conflict is the result of a recent decision by a judge of the Maine District Court. Title 29, section 58 allows a certificate from the Secretary of State or his deputy to be introduced as evidence of the secretary's suspension of a vehicle license or registration in cases involving a charge of driving after suspension. The Maine Rules of Evidence, as interpreted by that court, do not allow such evidence in criminal cases and the applicable rule would, according to the court, supersede Title 29, section 58. If such evidence is not allowed, the Secretary of State or a deputy would have to appear as a witness in every case of driving after suspension in order to prove that the defendant's license had in fact been suspended. Such a requirement, if followed by other courts, would cause an unanticipated and excessive burden on the Secretary of State's office. The new draft therefore amends Title 29, section 58 to provide that evidence may be introduced by certificate, notwithstanding any other law or rule of evidence that may be in conflict.