

# MAINE STATE LEGISLATURE

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2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1159, L.D. 1700, Bill, "An Act Concerning the Construction of the Maine Revised Statutes"

Amend the bill in section 2 in subsection 9-A by inserting at the end the following: 'This subsection applies to laws enacted or language changed by amendment after December 1, 1989.'

STATEMENT OF FACT

The amendment clarifies that the construction of "shall," "must" and "may" applies to laws enacted or amended in and after the Second Regular Session of the 114th Legislature. This rule of construction is intended to remove any ambiguity that may arise related to a drafting policy implemented by the Office of the Revisor of Statutes in 1989. At that time the Revisor's Office began to consistently apply a policy of using the grammatically correct "must" rather than "shall" to indicate a mandatory duty or provision when the legal subject of a statutory sentence is a thing rather than a person, and in certain other cases such as when the passive voice is used. The rule of construction establishes that no change in the gravity or weight of a duty is implied when the usage is changed from "shall" to "must." Since the usage of "shall," "must" and "may" in older laws is not consistent, the rule of construction is not intended to apply to earlier laws or to change retroactively the meaning of any preexisting section. Since courts have ruled that "shall" does not always indicate a mandatory action, see, e.g. Givertz v. Maine Medical Center, 459 A.2d 548 (1983), the rule of construction is not intended to change the precedential rule that "shall" or "must" does not always indicate mandatory action when the plain language of the enactment or the context otherwise requires.

Reported by the Committee on Judiciary  
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(5/22/91)

(Filing No. H-399)