

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 803

S.P. 311

In Senate, March 3, 2009

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**An Act To Authorize an Active Retired Justice or Judge To Conduct  
Arbitration and Chair Medical Malpractice Screening Panels**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator HASTINGS of Oxford.  
Cosponsored by Representative TARDY of Newport and  
Senators: HOBBS of York, MILLS of Somerset, SMITH of Piscataquis, Representatives:  
CROCKETT of Bethel, DILL of Cape Elizabeth, HAMPER of Oxford.

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

2 **Sec. 1. 4 MRSA §104**, as amended by PL 1983, c. 853, Pt. C, §§9 and 18, is  
3 further amended to read:

4 **§104. Active retired justices**

5 Any Justice of the Superior Court who has retired from the court under this chapter in  
6 effect prior to December 1, 1984, or any Justice of the Superior Court who retires or  
7 terminates ~~his~~ that justice's service on the court in accordance with chapter 27, except for  
8 a disability retirement, is eligible for appointment as an Active Retired Justice of the  
9 Superior Court. The Governor, subject to review by the joint standing committee of the  
10 Legislature having jurisdiction over judiciary and to confirmation by the Legislature, may  
11 appoint any eligible justice as an Active Retired Justice of the Superior Court for a term  
12 of 7 years, unless sooner removed. That justice may be reappointed for a like term. Any  
13 justice so appointed and designated ~~shall thereupon constitute~~ constitutes a part of the  
14 court from which ~~he~~ that justice has retired and ~~shall have~~ has the same jurisdiction and  
15 ~~be is~~ subject to the same restrictions therein as before retirement and, in addition, may  
16 have jurisdiction to conduct arbitration in accordance with Title 14, chapter 706 and chair  
17 screening panels in accordance with Title 24, chapter 21, subchapter 4-A, except that ~~he~~  
18 ~~shall~~ that justice may act only in the cases and matters and hold court only at the terms  
19 and times as ~~he may be~~ that justice is directed and assigned ~~to~~ by the Chief Justice of the  
20 Supreme Judicial Court. Any Active Retired Justice of the Superior Court may be  
21 directed by the Chief Justice to hold any term of the Superior Court in any county and  
22 when so directed ~~shall have~~ has authority and jurisdiction therein the same as if ~~he~~ that  
23 justice were the regular justice of that court. Whenever the Chief Justice of the Supreme  
24 Judicial Court so orders, that justice may hear all matters and issue all orders, notices,  
25 decrees and judgments in vacation that any Justice justice of that Superior Court is  
26 authorized to hear and issue.

27 **Sec. 2. 4 MRSA §157-B**, as amended by PL 1983, c. 853, Pt. C, §§12 and 18, is  
28 further amended to read:

29 **§157-B. Active retired judges; appointment**

30 Any Judge of the District Court who has retired from the court under this chapter  
31 prior to December 1, 1984, or any Judge of the District Court who retires or terminates  
32 ~~his~~ that judge's service on the court in accordance with chapter 27, except for a disability  
33 retirement, is eligible for appointment as an Active Retired Judge of the District Court as  
34 provided. The Governor, subject to review by the joint standing committee of the  
35 Legislature having jurisdiction over judiciary and to confirmation by the Legislature, may  
36 appoint any eligible judge to be an Active Retired Judge of the District Court for a term  
37 of 7 years, unless sooner removed. That judge may be reappointed for a like term. Any  
38 judge so appointed and designated shall thereupon constitute a part of the court from  
39 which ~~he~~ that judge has retired and ~~shall have~~ has the same jurisdiction and ~~be is~~ subject  
40 to the same restrictions therein as before retirement and, in addition, may have  
41 jurisdiction to conduct arbitration in accordance with Title 14, chapter 706 and chair  
42 screening panels in accordance with Title 24, chapter 21, subchapter 4-A, except that ~~he~~

1 ~~shall that judge may~~ act only in those cases and matters and hold court only at those  
2 sessions and times as ~~he may be that judge is~~ directed and assigned to by the Chief Judge  
3 of the District Court. Any Active Retired Judge of the District Court may be directed by  
4 the Chief Judge to hold any session of the District Court in any district and when so  
5 directed ~~shall have~~ has authority and jurisdiction therein the same as if ~~he~~ that judge were  
6 the regular judge of that court; and, whenever the Chief Judge of the District Court so  
7 orders, may hear all matters and issue all orders, notices, decrees and judgments that any  
8 Judge of that District Court is authorized to hear and issue. An Active Retired Judge ~~shall~~  
9 ~~receive~~ receives reimbursement for ~~his~~ expenses actually and reasonably incurred in the  
10 performance of ~~his~~ that judge's duties.

11 **Sec. 3. 24 MRSA §2852, sub-§1**, as amended by PL 1991, c. 130, §1, is further  
12 amended to read:

13 **1. Creation of panel lists.** The Chief Justice of the Superior Court shall recommend  
14 to each clerk of the Superior Court the names of retired or active retired justices and  
15 judges, persons with judicial experience and other qualified persons to serve on screening  
16 panels under this subchapter. The clerk shall place these names on a list from which the  
17 Chief Justice of the Superior Court will choose a panel chair under subsection 2.

18 Each clerk of the Superior Court shall maintain lists of health care practitioners, health  
19 care providers and attorneys recommended by the professions involved to serve on  
20 screening panels under this subchapter.

21 **Sec. 4. 24 MRSA §2852, sub-§2, ¶A**, as amended by PL 1991, c. 130, §2, is  
22 further amended to read:

23 A. Upon receipt of a notice of claim under section 2853, the clerk of the Superior  
24 Court who receives the notice shall notify the Chief Justice of the Superior Court.  
25 The Chief Justice shall choose a retired or active retired justice or judge, a person  
26 with judicial experience or other qualified person from the list maintained by the  
27 clerk to serve as chair of the panel to screen the claim. If at any time a chair chosen  
28 under this paragraph is unable or unwilling to serve, the Chief Justice shall appoint a  
29 replacement following the procedure in this paragraph for the initial appointment of a  
30 chair. Persons other than retired or active retired justices and judges or those with  
31 judicial experience may be appointed as chair based on appropriate trial experience.  
32 In the event that the Chief Justice seeks to appoint as chair a person who is not a  
33 retired or active retired justice or judge or does not have judicial experience, each  
34 side is entitled to exercise one challenge to the appointment of a chair by the Chief  
35 Justice.

## 36 SUMMARY

37 This bill amends the law to allow an active retired justice or judge to conduct  
38 arbitration and chair medical malpractice screening panels in addition to those retired  
39 justices and judges who may perform those duties now.