

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)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

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

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

CHAPTER 643

S.P. 871 - L.D. 2196

AN ACT to Create a Maine Code Governing the
Sale of Certain Commodities.

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

32 MRSA c. 109 is enacted to read:

CHAPTER 109

MAINE COMMODITY CODE

SUBCHAPTER I

GENERAL PROVISIONS

§11201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board of trade. "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving any commodity for sale on consignment, whether that person or group of persons is characterized as a board of trade, exchange or other form of marketplace.

2. Commodity. "Commodity" means, except as otherwise specified by the superintendent by rule or order, any agricultural, grain or livestock products or by-products, any metals or minerals, including a precious metal set forth in subsection 12, any gem or gemstone, whether characterized as precious, semiprecious or otherwise, any fuel, whether liquid, gaseous or otherwise, any foreign currency and all other goods, articles, products or items of any kind provided that the term commodity shall not include:

A. A numismatic coin whose fair market value is at least 15% higher than the value of the metal it contains;

B. Real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property; or

C. Any work of art offered or sold by art dealers at public auction or offered or sold through a private sale by the owner.

3. Commodity contract. "Commodity contract" means any account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

4. Commodity Exchange Act. "Commodity Exchange Act" means the Act of Congress known as the "Commodity Exchange Act," as amended to the effective date of this chapter, codified at the United States Code, Title 7, Section 1, et seq., and all subsequent amendments, additions or other revisions to that Act, unless the superintendent, within 10 days following the effective date of the amendment, addition or revision, disallows its application to this chapter or to any provision of this chapter by rule, regulation or order.

5. Commodity Futures Trading Commission. "Commodity Futures Trading Commission" means the independent regulatory agency established by Congress to administer the Commodity Exchange Act.

6. Commodity Futures Trading Commission Rule. "Commodity Futures Trading Commission Rule" means any rule or order of the Commodity Futures Trading Commission in effect on the effective date of this chapter, and all subsequent amendments, additions or other revisions to any rule or order, unless the superintendent, within 10 days following the effective date of any such amendment, addition or revision, disallows the application of any such amendment, ad-

dition or revision to this chapter or to any provision by rule or order.

7. Commodity merchant. "Commodity merchant" means any of the following, as defined or described in the Commodity Exchange Act or by Commodity Futures Trading Commission Rule:

A. Futures commission merchant;

B. Commodity pool operator;

C. Commodity trading advisor;

D. Introducing broker;

E. Leverage transaction merchant;

F. An associated person of any of the persons set out in paragraphs A to E;

G. Floor broker; and

H. Any other person, other than a futures association, required to register with the Commodity Futures Trading Commission.

8. Commodity option. "Commodity option" means any account, agreement or contract giving a party to the account, agreement or contract the right, but not the obligation, to purchase or sell one or more commodities or one or more commodity contracts, or both, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but shall not include an option traded on a national securities exchange registered with the United States Securities and Exchange Commission.

9. Financial institution. "Financial institution" means a bank, savings institution or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

10. Offer or offer to sell. "Offer" or "offer to sell" includes every offer to sell, offer to purchase or offer to enter into a commodity contract or commodity option.

11. Person. "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political

subdivision of a government, but does not include, a contract market designated by the Commodity Futures Trading Commission or any clearinghouse of the Commodity Futures Trading Commission or a national securities exchange registered with the United States Securities and Exchange Commission, or any employee, officer or director of such contract market, clearinghouse or exchange acting solely in that capacity.

12. Precious metal. "Precious metal" means the following in either coin, bullion or other form:

A. Silver;

B. Gold;

C. Platinum;

D. Palladium;

E. Copper; and

F. Such other items as the superintendent may specify by rule or order.

13. Sale or sell. "Sale" or "sell" includes every sale, contract of sale, contract to sell or disposition, for value.

14. Superintendent. "Superintendent" means the Superintendent of Banking.

§11202. Unlawful commodity transactions

Except as otherwise provided in section 11203 or 11204, no person may sell, purchase or offer to sell or purchase any commodity under any commodity contract or any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or commodity option.

§11203. Exempt person transactions

The prohibition in section 11202 does not apply to any transaction offered by and in which any of the following persons, or any employee, officer or director acting solely in that capacity, is the purchaser or seller:

1. Futures commission merchant or leverage transaction merchant. A person registered with the Commodity Futures Trading Commission as a futures

commission merchant or as a leverage transaction merchant whose activities require such registration;

2. United States Securities and Exchange Commission registered broker-dealer. A person registered with the United States Securities and Exchange Commission as a broker-dealer whose activities require such registration;

3. Affiliated persons. A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subsection 1 or 2;

4. Member of contract market. A person who is a member of a contract market designated by the Commodity Futures Trading Commission or any clearinghouse of the Commodity Futures Trading Commission;

5. Financial institution. A financial institution; or

6. State-registered broker-dealer. A person registered under the laws of this State as a securities broker-dealer whose activities require such registration.

The exemptions provided by this section do not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or Commodity Futures Trading Commission Rule.

§11204. Exempt transactions

1. Exempt transactions. The prohibitions in section 11202 do not apply to the following:

A. An account, agreement or transaction within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted under the Commodity Exchange Act;

B. A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within 7 calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment, provided that, for purposes of this paragraph, physical delivery shall be deemed to have occurred if, within that 7-day period, the quantity of precious metals purchased by the payment is delivered, whether in specifically segre-

gated or fungible bulk form, into the possession of a depository, other than the seller, which is either:

(1) A financial institution;

(2) A depository, the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission;

(3) A storage facility licensed or regulated by the United States or any agency of the United States; or

(4) A depository designated by the superintendent, and such depository, or other person which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a certificate, document of title, confirmation or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

C. A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, each commodity subject to such a commodity contract, or any by-product of such a contract; or

D. A commodity contract under which the offeree or the purchaser is a person referred to in section 11203, an insurance company, an investment company as defined in the Investment Company Act of 1940, or an employee pension and profit sharing or benefit plan, other than a self-employed individual retirement plan or individual retirement account.

2. Rules or orders specifying exemption. The superintendent may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the Commodity Futures

Trading Commission as granted by the Commodity Exchange Act, exempting any person or transaction from any provision of this chapter conditionally or unconditionally and otherwise implementing the provisions of this chapter for the protection of purchasers and sellers of commodities.

§11205. Unlawful commodity activities

1. Persons allowed to engage in commodity activities. No person may engage in a trade or business or otherwise act as a commodity merchant, unless that person:

A. Is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired, nor been suspended nor revoked; or

B. Is exempt from that registration by virtue of the Commodity Exchange Act or of a Commodity Futures Trading Commission Rule.

2. Board of trade allowed to trade. No board of trade may trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission, unless that board of trade has been so designated for that commodity contract or commodity option and that designation shall not have been vacated, nor suspended nor revoked.

§11206. Fraudulent conduct

No person may directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into or the entry into of any commodity contract or commodity option subject to section 11202; 11203; or 11204, subsection 1, paragraph B or D:

1. Cheat. Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme or artifice to defraud any other person;

2. False statements. Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

3. Fraud; deceit. Engage in any transaction, act, practice or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or

4. Misappropriation. Misappropriate or convert the funds, security or property of any other person.

§11207. Liability of principals, controlling persons and others

1. Officials and agents. The act, omission or failure of any official, agent or other person acting for any individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission or failure of the individual, association, partnership, corporation or trust, as well as of that official, agent or other person.

2. Controlling persons. Every person who directly or indirectly controls another person liable under any provision of this chapter, every partner, officer or director of such other person, every person occupying a similar status or performing similar functions, every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

§11208. Securities laws unaffected

Nothing in this chapter impairs, derogates or otherwise affects the authority or powers of the superintendent under the Revised Maine Securities Act or the application of any provision to that Act to any person or transaction subject to that Act.

§11209. Purpose

This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement of those laws. This chapter is not intended to create any rights or

remedies upon which actions may be brought by private persons against persons who violate the provisions of this chapter.

SUBCHAPTER II

ADMINISTRATION AND ENFORCEMENT

§11301. Investigations

1. Investigations. The superintendent may make investigations, within or outside this State, as he finds necessary or appropriate to:

A. Determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the superintendent; or

B. Aid in enforcement of this chapter.

2. Publication. The superintendent may publish information concerning any violation of this chapter or any rule or order of the superintendent.

3. Power of superintendent. For purposes of any investigation or proceeding under this chapter, the superintendent or any officer or employee designated by rule or order, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the superintendent deems to be relevant or material to the inquiry.

4. Court order. If a person does not give testimony or produce the documents required by the superintendent or a designated employee pursuant to an administrative subpoena, the superintendent or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

The request for order of compliance may be addressed to either:

A. The Superior Court located in the County of Kennebec or the Superior Court where service may be obtained on the person refusing to testify or produce, if the person is within this State; or

B. The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this State.

§11302. Enforcement of chapter

1. Cease and desist order. If the superintendent believes, whether or not based upon an investigation conducted under section 11301, that any person has engaged or is about to engage in any act or practice constituting a violation of any rule or order under this chapter, the superintendent may:

A. Issue a cease and desist order; or

B. Initiate any of the actions specified in subsection 2.

2. Court action. The superintendent may institute any of the following actions in the appropriate courts of this State, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

A. An action for declaratory judgment;

B. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the superintendent;

C. An action for disgorgement; or

D. An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

§11303. Power of court to grant relief

1. Violation of chapter. Upon showing of violation of this chapter or a rule or order of the superintendent, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders and permanent or temporary prohibitory or mandatory injunctions, may grant one or more of the following special remedies:

A. Imposition of a civil penalty in an amount which may not exceed \$10,000 for any single violation;

B. Disgorgement;

C. Declaratory judgment;

D. Restitution to investors wishing restitution; or

E. Appointment of a receiver or conservator for the defendant or the defendant's assets.

2. Violation about to occur. Upon a showing by the superintendent that a person is about to violate any provision of this chapter or any rule or order of the superintendent, the court may grant one or more of the following remedies:

A. A temporary restraining order;

B. A temporary or permanent injunction; or

C. An order appointing a receiver or conservator for the defendant or the defendant's assets.

3. No bond required. The court shall not require the superintendent to post a bond in any official action under this chapter.

4. Violation of foreign state law. Upon showing by the administrator of securities or commodity agency of another state that a person has violated the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, and permanent or temporary prohibitory or mandatory injunctions, may grant the following special remedies:

A. Disgorgement; or

B. Appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this State.

5. Violation of foreign law about to occur. Upon showing by the administrator or securities or commodity agency of another state that a person is about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court may only grant:

A. A temporary restraining order;

B. A temporary or permanent injunction; or

C. An order appointing a receiver, conservator or ancillary receiver or conservator for the de-

defendant or the defendant's assets located in this State.

§11304. Criminal penalties

1. Knowing violation. Any person who knowingly violates any provision of this chapter or any rule or order of the superintendent under this chapter shall be guilty of a Class C crime, provided that, notwithstanding Title 17-A, section 1301, the maximum fine shall be \$10,000 or any higher amount which does not exceed twice the pecuniary gain derived from the crime by the defendant.

2. Prosecution. The superintendent may refer such evidence as is available concerning violations of this chapter or any rule or order of the superintendent to the Attorney General or the proper district attorney, who may, with or without such a reference from the superintendent, institute the appropriate criminal proceedings under this chapter.

§11305. Administration of chapter

1. Superintendent. This chapter shall be administered by the Superintendent of Banking.

2. Use of information. Neither the superintendent nor any employee of the superintendent may use any information which is filed with or obtained by the superintendent which is not public information for personal gain or benefit, nor may the superintendent nor any employee of the superintendent conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate that information.

3. Public information. Notwithstanding any other provision of law, except as provided in paragraph A, all information collected, assembled or maintained by the superintendent is public information and is available for the examination of the public.

A. The following are exceptions to this subsection:

(1) Information obtained in private investigations pursuant to section 11301;

(2) Information made confidential by rule or order of the superintendent; or

(3) Information obtained from federal agencies which may not be disclosed under federal law.

4. Disclosure of information. The superintendent may disclose any information made confidential under subsection 3, paragraph A, subparagraph (1), to persons identified in section 11306, subsection 1.

5. Privilege. No provision of this chapter creates or derogates any privilege which exists at common law, by statute or otherwise, when any documentary or other evidence is sought under subpoena directed to the superintendent or any employee of the superintendent.

§11306. Cooperation with other agencies

1. Cooperation. To encourage uniform application and interpretation of this chapter and commodities regulation and enforcement in general, the superintendent and the employees of the superintendent may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the Commodity Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies and any governmental law enforcement agency.

2. Type of cooperation. The cooperation authorized by subsection 1 includes, but is not limited to, the following:

- A. Making joint examinations or investigations;
- B. Holding joint administrative hearings;
- C. Filing and prosecuting joint litigation;
- D. Sharing and exchanging personnel;
- E. Sharing and exchanging information and documents;
- F. Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and

G. Issuing and enforcing subpoenas at the request of the agency administering this chapter in another jurisdiction, the securities agency of another jurisdiction, the Commodity Futures Trading Commission or the Securities and Exchange Commission if the information sought would also be subject to lawful subpoena for conduct occurring in this State.

§11307. General authority to adopt rules, forms and orders

1. Rules; forms; orders. In addition to specific authority granted elsewhere in this chapter, the superintendent may make, amend and rescind rules, forms and offers as are necessary to carry out this chapter. These rules or forms shall include, but need not be limited to, the following:

A. Rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. For the purpose of rules or forms, the superintendent may classify commodities and commodity contracts, persons and matters within the superintendent's jurisdiction.

2. Adoption of rules; forms; orders. Unless specifically provided in this chapter, no rule, form or order may be adopted, amended or rescinded unless the superintendent finds that the action is:

A. Necessary or appropriate in the public interest or for the protection of investors; and

B. Consistent with the purposes fairly intended by the policy and provisions of this chapter.

3. Publication. All rules and forms of the superintendent shall be published.

4. Liability. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order or form adopted by the superintendent, notwithstanding that the rule, order or form may later be amended or rescinded, or be determined by judicial or other authority to be invalid for any reason.

§11308. Consent to service of process

1. Appointment of superintendent. When a person, including a nonresident of this State, engages in conduct prohibited or made actionable by the chap-

ter or any rule or order of the superintendent, the engaging in the conduct shall constitute the appointment of the superintendent as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor or personal representative, which grows out of that conduct and which is brought under the chapter or any rule or order of the superintendent with the same force and validity as if served personally.

2. Service. Service under subsection 1 may be made by leaving a copy of the process in the office of the superintendent, but it is not effective unless:

A. The plaintiff, who may be the superintendent in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address known to the plaintiff; and

B. The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

§11309. Scope of chapter

1. Seller. Sections 11202, 11205 and 11206 apply to persons who sell or offer to sell when:

A. An offer to sell is made in this State; or

B. An offer to buy is made and accepted in this State.

2. Purchaser. Sections 11202, 11205 and 11206 apply to persons who buy or offer to buy when:

A. An offer to buy is made in this State; or

B. An offer to sell is made and accepted in this State.

3. Offer in this State. For the purpose of this section, an offer to sell or to buy is made in this State, whether or not either party is then present in this State, when the offer:

A. Originates from this State; or

B. Is directed by the offeror to this State and received at the place to which it is directed, or

at any post office in this State in the case of a mailed offer.

4. Acceptance in this State. For the purpose of this section, an offer to buy or to sell is accepted in this State when acceptance:

A. Is communicated to the offeror in this State; and

B. Has not previously been communicated to the offeror, whether or not either party is then present in this State, when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed, or at any post office in this State in the case of a mailed acceptance.

5. Newspapers and other publications. For the purpose of this section, an offer to sell or to buy is not made in this State when the publisher circulates or there is circulated on his behalf in this State any bona fide newspaper or other publication of general, regular and paid circulation:

A. Which is not published in this State; or

B. Which is published in this State, but has had more than 2/3 of its circulation outside this State during the past 12 months.

For the purpose of this subsection, when a publication is published in editions, each edition shall be considered a separate publication except for material common to all editions.

6. Electronic communications. For the purpose of this section, an offer to sell or to buy is not made in this State when a radio or television program or other electronic communication originating outside this State is received in this State.

For the purpose of this subsection, a radio or television program or other electronic communication shall be considered having originated from this State if either the broadcast studio or means of transmission is located within this State, unless:

A. The program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State;

B. The program or communication is supplied by a radio, television or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State;

C. The program or communication is an electronic signal that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, television or other electronic system; or

D. The program or communication consists of an electronic signal which originates from within this State, but which is not intended for redistribution to the general public in this State.

This subsection does not apply to any changes, alterations or additions made locally to a radio or television program or other electronic communications.

§11310. Procedure for entry of an order

1. Notice of intent, summary order. The superintendent shall commence an administrative proceeding under this chapter, by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing and need not be supported by findings of fact or conclusions of law, but must be in writing.

2. Notification of parties. Upon entry of a notice of intent or summary order, the superintendent shall promptly notify, in writing, all interested parties that the notice or summary order has been entered and the reasons for that notice or order. If the proceeding is pursuant to a notice of intent, the superintendent shall notify all interested parties of the date, time and place set for the hearing in the notice or, if no hearing has been scheduled, the superintendent shall notify all interested parties that they have 30 calendar days from the entry of the notice of intent to file a written request with the superintendent for a hearing. If the proceeding is pursuant to a summary order, the superintendent shall notify all interested parties that they have 30 calendar days from the entry of the order to file a written request for a hearing on the matter with the superintendent and that the hearing will be scheduled to commence within 15 calendar days after the receipt of the written request.

Notwithstanding anything in this subsection, the superintendent may give notice of the entry of the notice of intent or summary order to such parties as he may determine to be necessary or appropriate.

3. Hearing. If the proceeding is pursuant to a summary order, the superintendent, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the superintendent's own motion.

4. Summary order final. A summary order issued against any person becomes a final order:

A. Thirty days after the superintendent mails notice to the interested parties of the right to request a hearing if they fail to request a hearing and none is scheduled by the superintendent; or

B. On the date of the hearing, if the person requesting the hearing fails to appear.

5. Action pending final determination. If a hearing is requested or ordered, the superintendent, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

6. Final order. No final order or order after hearing may be returned without:

A. Appropriate notice to all interested persons;

B. Opportunity for hearing by all interested persons; and

C. Entry of written findings of fact and conclusions of law.

§11311. Judicial review of orders

Any person aggrieved by a final order of the superintendent may obtain review of the order in the Kennebec County Superior Court by filing a petition in accordance with Title 5, section 11001, and the Maine Rules of Civil Procedure, Rule 80C.

§11312. Burden of proof

The burden of proof for an exemption from this

chapter shall be upon the person claiming that exemp-
tion.

Effective July 16, 1986.

CHAPTER 644

S.P. 819 - L.D. 2064

AN ACT to Assure Independent Advocacy for
Institutionalized Developmentally
Disabled Persons.

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

Sec. 1. 22 MRSA §3474, sub-§2, ¶B, as enacted by PL 1981, c. 527, §2, is amended to read:

B. An advocacy agency conducting an investigation under chapter 961, except as provided in subsection 3, paragraph D;

Sec. 2. 22 MRSA §3474, sub-§3, ¶¶B and C, as enacted by PL 1981, c. 527, §2, are amended to read:

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access shall be limited to incamera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before it; and

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; and

Sec. 3. 22 MRSA §3474, sub-§3, ¶D is enacted to read:

D. An advocacy agency conducting an investigation under chapter 961 when a complaint has been received by the agency from or on behalf of a developmentally disabled person residing in a facility for the developmentally disabled and that person does not have a legal guardian or the person is under public guardianship. The determination of what information and records are relevant